



Report to the First Secretary of State

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COUNCIL OF THE CITY OF WESTMINSTER

APPEALS

by

WEST END GREEN (PROPERTIES) LIMITED

Inquiry held on 6-7, 9, 13-16 and 20-23 July, 28-29 September and 1 October 2004

Land bounded by
Edgware Road, Church Street, Paddington Green and Newcastle Place, London W2

File Refs. APP/X5990/E/03/1132470, APP/X5990/E/03/1132473, APP/X5990/A/03/1132475,
APP/X5990/A/03/1132476

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File Ref. APP/X5990/E/03/1132470 (Option A)

Land at Edgware Road, Church Street, Paddington Green and Newcastle Place, London W2

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for conservation area consent.
- The appeal is made by West End Green (Properties) Limited against Westminster City Council.
- The application (ref. 03/03464/CAC) is dated 30 April 2003.
- The demolition proposed is 143, 145 and 147 Church Street and 11, 12 and 13 Paddington Green.
- The appeal was recovered for decision by the First Secretary of State because it is more efficiently decided in conjunction with Appeal A/03/1132475 below.

Summary of Recommendation: that the appeal be allowed and conservation area consent granted.

File Ref: APP/X5990/E/03/1132473 (Option B)

Land at Edgware Road, Church Street, Paddington Green and Newcastle Place, London W2

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for conservation area consent.
- The appeal is made by West End Green (Properties) Limited against Westminster City Council.
- The application (ref. 03/03466/CAC) is dated 30 April 2003.
- The demolition proposed is 143, 145 and 147 Church Street and 11, 12 and 13 Paddington Green.
- The appeal was recovered for decision by the First Secretary of State because it is more efficiently decided in conjunction with Appeal A/03/1132476 below.

Summary of Recommendation: that the appeal be allowed and conservation area consent granted.

File Ref: APP/X5990/A/03/1132475 (Option A)

Land at Edgware Road, Church Street, Paddington Green and Newcastle Place, London W2

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by West End Green (Properties) Limited against Westminster City Council.
- The application (ref. 03/03463/FULL) is dated 30 April 2003.
- The development proposed is 'to provide buildings of between 6 and 22 storeys to include a retail supermarket, 307 residential units, 156 holiday let units, associated car parking and landscaping'.
- The appeal was recovered for decision by the First Secretary of State because the scheme involves residential development of more than 150 dwellings.

Summary of Recommendation: that the appeal be dismissed and planning permission refused.

File Ref: APP/X5990/A/03/1132476 (Option B)

Land at Edgware Road, Church Street, Paddington Green and Newcastle Place, London W2

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by West End Green (Properties) Limited against Westminster City Council.
- The application (ref. 03/03465/FULL) is dated 30 April 2003.
- The development proposed is 'to provide buildings of between 6 and 26 storeys to include a retail supermarket, 326 residential units, 156 holiday let units, associated car parking and landscaping'.
- The appeal was recovered for decision by the First Secretary of State because the scheme involves residential development of more than 150 dwellings.

Summary of Recommendation: that the appeal be dismissed and planning permission refused.

1. THE SITE AND SURROUNDINGS

- 1.1 The appeal site lies on the south-west side of Edgware Road, just north-west of its junction with Harrow Road and Marylebone Road. Its north-westerly boundary is along Church Street, its southerly along Newcastle Place. It has a back-to-front L-shape, the toe being the frontage to Paddington Green. A terrace of existing buildings occupies the majority of the frontage to Paddington Green from Newcastle Place north-west to Church Street.^A
- 1.2 The evidence to the inquiry took Edgware Road to run north-south, with the appeal site on its west side, Church Street and Newcastle Place running east-west to the north and south respectively and Paddington Green running north-south to the west. I adopt this simpler orientation in my report to give general consistency with the accompanying documents.

The Appeal Site

- 1.3 The site occupies the whole of the Edgware Road frontage between Newcastle Place and Church Street with the exception of 283 Church Street and 5 Newcastle Place, in effect a single building standing on the corner of those two roads. Three existing buildings, vacant and derelict, of similar design to 283, stand alongside it. Two similar buildings stand roughly midway along the frontage and one in Church Street, buttressed by the remains of the buildings on either side. Otherwise, a two-storey high hoarding encloses the site on those two streets, decorated to simulate building frontages.^B
- 1.4 A modern but vacant 4-storey building, with curtain walling above a generally solid and blank ground floor, stands on the Newcastle Place frontage, to the west of no. 5. Nos. 11 and 12 Paddington Green comprise a three-storey, twentieth century building with a flat roof. A long flank wall (over 50m) faces Newcastle Place. The Paddington Green façade has a tall, single-storeyed garage or workshop, with two folding-shutter doors, projecting forward some 6.0m from the main building line of nos. 11, 12 and 13 (about 13.0m from the back-of-footpath). No. 13 is a vacant and decaying house, four-storeyed, brick-built with stone dressings, and with a full-width, canted oriel on the first and second floors.^C
- 1.5 Nos. 143, 145 and 147 Church Street (145 is included in the conservation area consent applications but is not shown on the plans) stand some 50m from Edgware Road. No. 147 is a twentieth century building with a full-width vehicular ground floor doorway and full-width glazing to the two floors above. No. 143 is a single-storeyed garage or workshop with a full-width doorway to the street. It extends over 25m into the site. A single-storey brick building to the rear of 147 extends about 65m into the site, along the rear boundary of the adjacent Church Street and Paddington Green properties. The cleared land within the site is used as a temporary car park, with access from Church Street, alongside 143.^D

The surrounding townscape

- 1.6 The appeal site's surroundings are varied indeed. The only buildings directly abutting it are in Church Street and Paddington Green. The Paddington Green buildings are the

^A Document CD1 is a site location plan; Document G6.11 has an A-Z extract and a site plan on its first page; Document G6.1 has an unnumbered location plan and the existing site plan (0203[15.06]P001A) at 1:500.

^B Document CD2, photographs 8, 7, 6, 2 & 3, and Document G6.1, dwgs. 0203[15.06]P001A, P010A & P013A. Document A14, pp. RC2, RC3 (fig.1), RC5, RC6 and RC7.

^C Document CD2, photograph 7; Document G6.1, dwgs. 0203[15.06]P001A, P012A & P011A; and Document A14, pp. RC2 & RC3 (fig.1).

^D Document CD2, photograph 3; Document A14, pp. RC5 (fig.3) & RC7 (figs. 1 & 2); and Document G6.1, dwgs. 0203[15.06]P001A & P013A.

oldest in the vicinity, dating back to Georgian times. Edgware Road is essentially late-Victorian in character. Between the two, to the north of Church Street, residential and educational development dates from the latter half of the twentieth century. Paddington Basin, on the south side of the A40, is a densely developed area of modern and relatively tall buildings, with more being (and still to be) built. The A40 acts as something of a visual and physical barrier but something of the height and scale of development to the south is reflected to the north in the forms of the Paddington Green Police Station, the tall building flanking Marylebone Road to the east of Edgware Road (beyond the frontage buildings) and even the three residential towers to the north of Church Street.^A

Edgware Road

- 1.7 283 Edgware Road is a four-storey building, probably early-Victorian, with a ground floor shop, a low top storey and a roof concealed behind a parapet. 5 Newcastle Place has two storeys; it was not originally part of 283 but now has the shop fascia carried across its façade to bring the two buildings together visually.^B To the south, between Newcastle Place and the A40, is the Paddington Green Police Station. A three-storey podium with a somewhat uninviting appearance stands behind a wide footway, within which is subway ramp. A fourteen-storey tower (including plant) rises above the podium; a smaller eight-storey tower stands to the rear.^C
- 1.8 On the opposite side of Edgware Road, south of the appeal site, the frontage between Penfold Place and Broadley Street comprises two-, three- and four-storey buildings, mainly brick, some painted. There is a certain consistency of rhythm and style even though the buildings are different ages and have different degrees of ornamentation. Between Broadley Street and Church Street, flanked by twentieth century buildings on both corners, is a four-storey brick-built Victorian terrace. The top storey is an attic floor behind decorative gables facing the street. The first and second floors have canted bays with parapetted heads. The ground floors have projecting shop units, many with modern fronts, though with indications that the shops are original features of the terrace.^D
- 1.9 To the north of Church Street, the same pattern of building is maintained on the east side – four-storey buildings with single-storey shops projecting forward to the back-of-footpath. A similar terrace stands on the west side of the road, some 50m north of Church Street. The intervening frontage is occupied by the Gilbert Sheldon House development – a four-storey block of maisonettes facing Edgware Road, though set back from it, and an eight-storey building at right angles, over 30m north of Church Street. The footway in front of Sheldon House is some 8.0m wide, narrowing to about 4.3m at the Victorian terrace.^E Further north is Parsons House, a 22-storey block of flats; modern shops face the road to its north and south, set well back behind trees and landscaping.^F

^A Document A4 – fig.14 on p.9 shows the general disposition of tall buildings in the vicinity of the appeal site.

^B Document CD2, photograph 7.

^C Document G6.1, dwg. 0203[15.06]P001A; in Document CD2, photograph 6 shows the tower beyond the appeal site; the cover of Document A35 shows the taller tower and the proposed tower to the right and left behind the lower tower; in Document A14, the Edgware Road frontage is seen in fig.1 on p. RC1; p.1 in Appendix 15 of Document A8.2 shows the subway ramp.

^D Document A14 – fig.2 on p. RC1 shows the more southerly terrace looking north;

Document CD2 – photograph 4 shows the more northerly terrace looking south.

^E Document CD2 – part of Sheldon House can be seen on the right-hand-side of photographs 2 & 6; also, in Document A8.2, the photographs on p.3 show the building and the footway.

^F Document A8.2 – Parsons House can be seen in the upper photographs on pp.4/6/7; the photographs on pp.20/21 show the shops set back from the road and the base of the tower.

- 1.10 In Maida Vale, beyond the junction with Maida Avenue, there is a more formal urban composition of mansion blocks, tall and elegantly detailed, on the west side of the road.^A

Church Street

- 1.11 Opposite the appeal site is the Sheldon House development, described above. To its west is the Hall Place residential development, dating from the 1960s or 1970s and comprising low-rise buildings around the 20-storey Hall and Braithwaite Towers. West of that is the Paddington Centre of the City of Westminster College, single- or two-storey building over most of the site but also with an eight-storey block.^B
- 1.12 Adjacent to the appeal site is Princess Louise Close, a courtyard reached by a vehicular access through the frontage building, Winicotte House, and which contains the Paddington Green Health Centre. Winicotte House is a three-storey building with a mansard attic storey, built in stock brick with stone dressings. Part of the building at its eastern end, through which is the access to the courtyard, is a later addition of four storeys but of roughly the same height as the original.^C On the corner of Church Street and Paddington Green stands Mary Adelaide House, formerly a children's hospital. It is an ebullient late-Victorian building with three tall storeys plus a mansard attic and a taller corner tower. It is built in dark red brick with terracotta dressings. It is listed in grade II.^D

Paddington Green

- 1.13 To the south of Mary Adelaide House is a short terrace made up of buildings of clearly individual design and character. Nos. 17 and 18 are a pair of elegantly proportioned semi-detached houses dating from around 1800 and listed in grade II. They are four-storeys high above a semi-basement, the top storey being a later addition, built in stock brick with stucco dressings. The building to the south, two storeys over a basement, appears to be a twentieth century redevelopment, sympathetic but unremarkable, of the former wing of no. 17. Nos. 15 and 16 have the appearance of a single building, four storeys high, but with a projecting ground floor that has little to do with the original character or design. No. 14 is just three storeys high, nicely proportioned and largely unaltered. The building line along Paddington Green varies considerably. The main façade of Mary Adelaide House stands almost 5.0m from the back-of-footpath; nos. 17 and 18 stand a further 6.0m or so back, as does no. 14; nos. 15 and 16 stand about 3.0m forward of the buildings on either side.^E
- 1.14 Paddington Green itself is a very attractive oasis of open space, well treed and something of a hybrid between a formal square and an informal park. The area nearest to the appeal site is railed off from the roads, grassed with footpaths running diagonally through it and with a fairly dense covering of mature trees. The centrepiece of the Green is St Mary's Church, built in the late eighteenth century and listed in grade II* but so surrounded by trees and shrubs as to be largely unnoticeable from around the appeal site.^F

^A Document A8.2 – Appendix 15, pp.32-37.

^B Document CD2 – Hall Tower and the College are partially visible behind Sheldon House in photograph 2; Hall Tower and Braithwaite Tower are shown in photograph 5; Document A14 – RC7, fig.2 shows Sheldon House and Hall and Braithwaite Towers; RC8, fig.2 shows the College.

^C Document A14 – RC5, figs.3/4 show the frontage of Winicotte House; RC15 shows views within the courtyard; Document G6.1, dwg. 0203[15.06]P013A has the Church Street elevation.

^D Document A14 – RC3 (fig.3), RC5 (fig.4), RC9 (fig.1); the list description is in Document CD46.

^E Document A14 – RC3 (figs.1/2/3) and RC2 (fig.3); the list description for nos. 17 & 18 is in Document CD46; Document G6.1 – dwgs. 0203[15.06]P001A and P012A; Also Document CD2, photograph 1.

^F Document G6.1, dwg. 0203[15.06]P001A, indicates the layout of the Green nearest to the appeal site; in Document A14, the Green is illustrated in RC3 (fig.2), RC8 (fig.3), RC9 and RC10 (figs.1/2); St Mary's Church is glimpsed in RC10 (fig.10), RC11 and RC12 (figs.1/2); the list description is in Document CD46.

South of the A40

- 1.15 The Westway (A40) flyover forms something of a physical and visual barrier between Edgware Road to the north and south of Harrow Road and Marylebone Road.^A Walking along Edgware Road, the pedestrian has to cross two carriageways at light-controlled crossings as well as walking under the unornamented construction of the flyover itself.
- 1.16 The Hilton London Metropole Hotel stands in the south-west angle of the junction and comprises a number of buildings, including a 23-storey tower (with the equivalent of three storeys of plant above) on the corner and a 15-storey slab block facing Harrow Road.^B Behind to the south-west is the Paddington Special Policy Area (PSPA), the full development of which promises a tall and dense pattern of building. The site of the Grand Union (GU) Tower, which Westminster City Council (WCC) has resolved to approve and which would be the tallest building in the area, is just to the west of the Hilton Hotel.^C
- 1.17 Edgware Road to the south of the flyover is a busy shopping street with a vibrant urban character. The carriageway is generally four lanes wide and the footways are generous. The buildings are generally larger in scale or mass than those north of the flyover and include a series of mansion blocks interlinked with a three-storey frontage.^D

The Edgware Road traffic corridor

- 1.18 Edgware Road is part of the A5 road running north from Marble Arch. It is a 'red route', part of the Transport for London Road Network (TLRN). Its junction with Harrow Road and Marylebone Road (at the eastern end of the A40(M) motorway) is almost immediately to the south of the appeal site. The A5's junction with the North Circular Road and the southern end of the M1 motorway is at Staples Corner, about 7km north.
- 1.19 Travelling in a northerly direction from the Harrow Road junction,^E there are two general traffic lanes and a bus lane along the frontage of the Paddington Green Police Station, narrowing at 283 Edgware Road to one lane only (though wide enough to accommodate two lanes of stationary or slow-moving traffic). There is a light-controlled pedestrian crossing just north of 283 (just south of Broadley Street on the opposite side of the road). There are two north-bound lanes from the pedestrian crossing through the Church Street junction. North-bound traffic cannot turn right into Church Street. There is a bus stop about 65m beyond the Church Street junction and the two lanes narrow to one about 100m beyond the junction (where there is an uncontrolled crossing with the footway built out and a central refuge, immediately north of Boscobel Street). Although the carriageway is wide enough here for two lanes, it is the built-out footway, the designated loading bay and cycle parking to its south and the disabled parking to its north that limit it to a single lane. There is also a short protected right-turn lane (south of the refuge) into Boscobel Street. A light-controlled pedestrian crossing with a central refuge is located just south of Frampton Street and a bus stop just to the north. A painted (diagonally hatched) central reservation limits the north-bound carriageway to a single lane from Frampton Street almost to the traffic lights at the junction with Maida Avenue. There are two lanes at the junction itself.

^A Document A8.2 the photographs on p.1 of Appendix 15 show the flyover in views looking south

^B Document CD2 photograph 6 shows the hotel's tower and slab blocks to the left and right behind the Paddington Green Police Station.

^C Document B22 - Map 5.1 shows the PSPA.

^D Document A4 - fig.38 on p.17.

^E Document D5 - dwg. 79422(QS)/101/A shows the existing layout in segments, north-bound from left to right.

- 1.20 I visited Edgware Road four times – as part of the accompanied site visit on 8 July 2004, unaccompanied that afternoon and also on the afternoons of 14 and 30 September. I drew the impression from those visits that Edgware Road north-bound could be more congested in mid-afternoon than in the evening peak hour. This seems largely because loading restrictions are more severe after 1600 hours than before and infringements are fewer. A single vehicle lawfully (or unlawfully) loading or unloading could cause a substantial tail-back of traffic before 1600 but that seemed less likely to happen after 1600. Other causes of congestion are the lights at the Frampton Street pedestrian crossing, buses stopped at the bus stop to its north and (despite the lane markings) traffic waiting to turn right into Frampton Street or Orchardson Street (sometimes prevented from doing so by traffic or parking in those streets rather than by having to wait for a gap in south-bound traffic on Edgware Road). North-bound traffic often tailed back from Frampton Street or Boscobel Street as far as the Church Street junction, and sometimes further. Queues at the Church Street junction and the Broadley Street pedestrian crossing often tailed back very nearly to the Harrow Road junction, but never into it.
- 1.21 Travelling south along Edgware Road from Maida Avenue,^A there is one lane only as far as Orchardson Street, after which there is a general traffic lane and a bus lane. The general traffic lane at the Frampton Street pedestrian crossing appears narrow (in fact, the bus lane ceases from immediately north of Frampton Street until immediately after the pedestrian crossing). The road continues as a general traffic lane and a bus lane until south of 283, where there is a third lane on the approach to the Harrow Road junction. At the Church Street junction, the bus lane ceases some 35m north of the stop line and the offside lane is marked for both straight-ahead and right-turning traffic. In general terms, traffic flowed more freely south-bound than north-bound.

Views

- 1.22 Twenty-one key views were identified as part of the application process. Eight of these are considered in detail in WCC's evidence and my accompanied site visit took in all eight.^B Little purpose would be served by describing the existing views when not only must the proposed buildings be imagined but so too must the GU Tower, which may come to be built in PSPA, close to the south side of the A40.

Brook House, 111 Strand and West India Dock

- 1.23 The accompanied site visit took in Brook House, a building by Squire and Partners (the appellant's architect) on the corner of Park Lane and Upper Brook Street.^C I found it to be a very carefully designed and executed building, unashamedly modern in design but fitting extremely well into its more traditional context. I visited 111 Strand and West India Dock unaccompanied. The former is by Squire and Partners, another carefully executed piece of modern architecture in more traditional surroundings.^D The latter development was masterplanned by Squire and Partners; it has a tower of a design not dissimilar to (though taller than) those proposed for the appeal site but with the detailed design by another architect.^E

^A Document D5 – dwg. 79422/OS/101/A shows the existing layout in segments, south-bound from right to left.

^B Documents G6.11 and G7.11 are the Certified Views Brochures for Options A and B; Document B3 addresses those thought to be most important in paras. 8.7-8.18.

^C Document A4, figs. 1-3 on p.5 and fig.8 on p.7; also pp.56-61 in Document A5.

^D Document A5, pp 156-159.

^E Document A4, figs.4-7 on p.6; also pp.176-179 in Document A5.

2. PLANNING POLICY^A

- 2.1 The Development Plan for the area was, until 28 September 2004, the *City of Westminster Unitary Development Plan*, adopted in 1997 (the UDP). A *Replacement UDP* is on the point of adoption. Following an inquiry and report on objections, *Proposed Modifications* were placed on deposit in May and June 2004. A report is expected to be placed before Committee in November 2004, recommending adoption forthwith.^B
- 2.2 In the adopted UDP,^C the appeal site is identified in Schedule 1 and on the Proposals Map as a site for mixed development (M8), including residential and retailing.
- 2.3 In the Housing chapter, Policy H 3 encourages the provision of more residential floorspace within redevelopment, Policy H 5 encourages affordable housing, Policy H 6 seeks a range of accommodation sizes and Policy H 11 deals with residential density, Policy SC 1 setting the density range for this area at 247-494 habitable rooms per hectare.
- 2.4 In the Transport chapter, Policy TRANS 1 seeks to restrain the use of cars. Policy TRANS 3(B) identifies Edgware Road between Newcastle Place and Church Street for widening in conjunction with expected redevelopment (the safeguarding line for widening being shown on Map 20). Policy TRANS 8 seeks the maintenance and improvement of bus services, Policy TRANS 21 seeks to provide more circulation space for pedestrians and Policies TRANS 24, 25, 26 and 28 (with Policies SC 5, 6 and 11) deal with parking.
- 2.5 In the Shopping chapter, Schedule 1 identifies 283-327 Edgware Road as a mixed shopping frontage (adjacent lengths of Edgware Road and Church Street are shown as mixed and main frontages respectively). Policy SS 9 encourages new and replacement shopping provision and Policy SS 10 sets out the criteria to be addressed in considering proposals for major new retail outlets.
- 2.6 In the Conservation and Design chapter, Policy DES 1 deals with standards of design. Policy DES 3 resists development that would have a detrimental effect on local views (including views from Royal Parks), on listed or landmark buildings or on groups of such buildings. Policy DES 4 resists, as a generality, buildings that would be significantly higher than their surroundings. Policy DES 7 seeks the preservation or enhancement of the character and appearance of conservation areas and Policy DES 8(I) seeks to protect the settings of listed buildings. Policy DES 17 encourages proposals for public art. Policy DES 18 promotes conservation and protection of the City's archaeological heritage.
- 2.7 In the Standards and Controls chapter, in addition to those mentioned above, Policy SC 14 deals with sunlight and daylight to existing land and property as well as for new or replacement development.
- 2.8 The Replacement UDP, as it is expected to be adopted,^D changes little, if anything, in relation to the appeal site. It is identified as a Major Development Site (R25) in Schedule 1, shown on Map 12.19.

^A Document B8 – Section 4 gives WCC's résumé of relevant planning policy;
Document D3 – Section 3 gives the planning context so far as it affects TfL's views;
Document A2 – Section 5 gives the appellant's outline of planning policy;
Document E/GJF/1 – Section 3 addresses the relevant policies so far as Sainsbury's objections are concerned.

^B Document B22 explains the position as at 4 November 2004

^C Document CD69.

^D Documents CD35 (Pre-Inquiry version) and CD37 (Proposed Modifications).

- 2.9 In the Housing chapter, Policies H 3, H 4 (with much more detail), H 5 and H 11 reflect adopted Policies H 3, H 5, H 6 and H 11, the density range for H 11 being rationalised to 250-500 habitable rooms per hectare.
- 2.10 In the Transport chapter, Policies TRANS 3 and TRANS 4 reflect adopted Policies TRANS 21 and TRANS 8 but with much more detail. Policy TRANS 9 seeks financial assistance towards transport, including through section 106 obligations, a matter covered only in the supporting text to adopted Policy TRANS 8. Policy TRANS 17 protects petrol filling stations. Policy TRANS 18(A) reflects adopted Policy TRANS 3(B). As proposed to be modified, the policy safeguards the widening of Edgware Road in conjunction with any redevelopment proposals, the safeguarding line being shown on Map 4.7; in the pre-inquiry version, the supporting text is clear that comprehensive redevelopment, while preferable, may not be possible and that allowing development of the frontage in stages will therefore be considered. Policies TRANS 21-25 deal with off-street parking; Appendix 4.2 is a Parking Standards Matrix.
- 2.11 In the Shopping Chapter, the appeal site frontage falls within the Church Street / Edgware Road District Centre, shown on Map 7.6. Policy SS 12 enables major retail developments (including superstores) within District Centres subject to criteria aimed at protecting vitality and viability and ensuring good accessibility and urban design.
- 2.12 In the Environment chapter, Policy ENV 12 carries forward in (D) and (E) the provisions of adopted Policy SC 14.
- 2.13 In the Urban Design and Conservation chapter, Policy DES 1 deals with the principles of development, looking for the highest quality of form and design, and Policy DES 2 deals with extensive developments, again with an emphasis on architecture and urban design. Policy DES 3 replaces adopted Policy DES 4; it resists high buildings which would have an adverse effect on the character and appearance of conservation areas, the settings of listed buildings or views from Royal Parks or which would be incongruous within their surroundings; it states that existing high buildings cannot set a precedent for new high buildings on adjacent sites and it sets criteria by which proposals may be permitted as an exception to the general presumption. Policy DES 7(A) elaborates on the public art provisions of adopted Policy DES 17. Policies DES 9 and DES 10(E) reflect adopted Policies DES 7 and DES 8(I). Policy DES 11(B) identifies the circumstances in which permission for development within an Area of Special Archaeological Priority will be granted (the site is within the Paddington and Lilliestone Village Area shown on Map 10.6). Policy DES 15 protects metropolitan and local views and, in terms of these appeals, rather duplicates the provisions of Policy DES 3.
- 2.14 Supplementary planning guidance produced by WCC includes An Environmental Masterplan for Church Street Neighbourhood, a Shopping Area Health Check Survey for the District Centre and the Paddington Green Conservation Area Audit.^A There is also draft supplementary planning guidance on Planning Obligations, on which the responses to public consultation in October 2003 are still being assessed.
- 2.15 The London Plan^B became part of the Development Plan by virtue of Part 1 of the Planning and Compulsory Purchase Act 2004. Policy 2A.1 is an overarching policy promoting sustainable development by reference to nine criteria dealt with in more detail in subsequent chapters.

^A Documents CD40, CD42 and CD43.

^B Document CD32.

- 2.16 Policies 3C.1 and 2 look to integrate transport and development and to match development to transport capacity. Policy 3C.13 seeks enhanced bus priority. Policy 3C.15 sets criteria to be satisfied by road scheme proposals. Policy 3C.16 sets criteria to be used to tackle congestion and reduce traffic. Policy 3C.17 concerns the allocation of street space, looking to give priority to buses, cyclists and pedestrians. Policies 3C.19, 20 and 21 seek improved conditions for buses, walking and cycling respectively. Policy 3C.22 sets out the principles of a parking strategy.
- 2.17 Policy 4B.1 sets out the design principles for a compact city. Policy 4B.2 promotes world-class architecture and design. Policy 4B.3 looks to maximise the potential of sites. Policy 4B.5 expects future development to meet the highest standards of accessibility and inclusion. Policy 4B.6 seeks sustainable design and construction. Policy 4B.8 promotes tall buildings where they would enhance London's character, help to provide a coherent location for economic clusters of related activities and/or act as a catalyst for regeneration. Policy 4B.15 provides a London View Protection Framework.
- 2.18 There is also the Mayor's Transport Strategy,^A which deals, amongst other things, with improving public transport, including seeking early improvements in the reliability, quality and capacity of the bus network, with tackling congestion and with how conditions can be improved for all users of London's streets. Chapter 4A sets out ten key transport system priorities. Chapter 4F deals with 'a better bus network'. Chapter 4G with 'streets for all: improving London's roads and streets'.
- 2.19 Relevant national planning policy guidance may be found in PPG1 *General Policy and Principles*, PPG3 *Housing*, PPG6 *Town Centres and Retail Developments*, PPG12 *Development Plans*, PPG13, *Transport*, PPG15 *Planning and the Historic Environment* and PPG21 *Tourism*. Given the nature of the issues between the main parties, it is the guidance in PPG13 and PPG15 that is most relevant. Also to be taken into account is *Guidance on Tall Buildings*, prepared by English Heritage (EH) and the Commission for Architecture and the Built Environment (CABE) and *By Design*, by DETR and CABE.^B

^A Document CD33.

^B Documents CD48 and CD50.

3. THE PROPOSALS

- 3.1 The two applications for conservation area consent are identical, one accompanying each of the two applications for planning permission for redevelopment. The site is only partly in the Paddington Green Conservation Area. Complete demolition is proposed for nos. 11, 12 and 13 Paddington Green and nos. 143, 145 and 147 Church Street. There are other buildings along the Edgware Road, Church Street and Newcastle Place frontages that are not in the conservation area and whose demolition does not require consent.

Option A

- 3.2 The scheme subject of appeal ref. A/03/1132475 (application ref. 03/03463/FULL) is known as Option A and referred to as such in all of the inquiry documents and plans. I refer to it as Option A throughout this report. It proposes redevelopment of the whole of the site with a number of buildings to provide a supermarket of 4,970sqm, 307 residential units and 156 holiday let units. The visual focus of the scheme would be a 22-storey tower (Building D on the application plans) at the southern end of the site, with a curved southerly facade. It would contain private residential units above a ground floor providing small retail units and a residential entrance. The holiday let units would be contained in three linked and identical 'mansion' buildings along the Edgware Road frontage (Buildings C1, C2 and C3). Three similar buildings would stand at the rear of the site (Buildings A1, A2 and A3), containing private residential units. Affordable housing would be provided in the building facing Church Street (Building B). Completing the development would be two further private residential buildings, a six-storey building (E2) on Newcastle Place, west of the tower, and a five-storey building (E1) on the corner of Newcastle Place abutting the end of the existing terrace on Paddington Green. Courtyard gardens at first floor level would be contained between Buildings A, B, C and D. The supermarket would occupy the ground floor beneath Buildings A, B and C.
- 3.3 The scheme would contain two basement floors of car parking. The upper level, with access from Church Street, would provide 223 spaces for use in connection with the supermarket and the District Centre. The lower level, with access from Paddington Green through Building E1, would provide 226 spaces for the residential units. Service access to the supermarket would be off Church Street with a turntable in the service area, beneath Building B, to avoid delivery lorries having to reverse off or on to the street.
- 3.4 The proposed buildings would be set back behind the existing building line along Edgware Road but not as far back as the safeguarding line in the UDP. The proposed building line would enable a partial road-widening scheme. No. 283 Edgware Road, not within the appeal site, constrains the width of the road at its junction with Newcastle Place. To its north, the road would be widened to two lanes northbound and three lanes, including a bus lane, southbound. The three southbound lanes would taper into two with the bus lane ceasing (as it does at present) immediately north of the Broadley Street junction. The approach to the light-controlled Church Street junction from the north would have three lanes, including a right-turn lane.

Option B

- 3.5 The scheme subject of appeal ref. A/03/1132476 (application ref. 03/03465/FULL) is known as Option B and is referred to as such throughout this report. It varies from Option A in only two respects. The tower (Building D) would be 26 storeys high instead of 22 and the building to its west (Building E2) would be seven storeys high instead of six. This would raise the number of residential units from 307 to 326.

4. OTHER PROPOSALS NOT THE SUBJECT OF THE INQUIRY

West End Green's Option C

- 4.1 Subsequent to the appeals being lodged, West End Green (Properties) Limited submitted an application on a third scheme for the site (known as Option C). It is virtually identical to Option A but kept back to the safeguarding line identified in UDP Policy TRANS 3 (TRANS 18 in the Replacement UDP). The result is that the supermarket would be slightly smaller, at 4,610sqm, and the open courtyard between Buildings A and B would be a little narrower. The number of residential units and holiday let units is unchanged from Option A. Supermarket car parking would be reduced to 180 spaces.
- 4.2 Westminster City Council has resolved to grant planning permission on this scheme subject to the execution of a satisfactory section 106 obligation. The package of measures proposed for the obligation includes, amongst other things, road widening, best endeavours to acquire 283 Edgware Road, security measures for Paddington Green Police Station and a total of £750,000 towards community and environmental benefits.

Sainsbury's Application

- 4.3 Sainsbury's Supermarkets Limited has obtained an option on 283 Edgware Road. It has therefore been able to submit an application for the appeal site with development set back to the UDP safeguarding line and with no encumbrance to a full widening scheme to provide six lanes, with bus lanes north and south, for the whole stretch of Edgware Road between Harrow Road and Church Street.
- 4.4 The principles of the scheme are the same as West End Green's but the design is very different. A supermarket would occupy most of the ground floor, above two basement parking levels (both accessed from Church Street). The pedestrian route through the site to Church Street from Edgware Road at the corner of Newcastle Place would perhaps be more overt and there would also be a pedestrian route through the development to Paddington Green (whereas West End Green has concentrated on enhancing Newcastle Place). There would still be a tower at the southerly end of the site but the frontage development along Edgware Road (excluding the circulation towers) would rise steadily towards it, from five storeys at Church Street to nine storeys at the corner of Newcastle Place. The tower would also step down from 22 storeys (excluding plant) to sixteen to six in a continuous frontage along Newcastle Place to Paddington Green, where the corner building itself would be seven storeys high.
- 4.5 The application has still to be determined by Westminster City Council. Indeed, amendments to the original application scheme have already been made and more are to be anticipated.

5. PLANNING HISTORY

- 5.1 The planning history of the site is extensive.^A The gist of it is this.
- 5.2 Resolutions were made to grant planning permission in 1989 and 1991 on proposals for retail, residential and office floorspace. In both cases, the site excluded nos. 283-289 Edgware Road. Approval was subject to legal agreements which were never completed.
- 5.3 A planning brief was adopted in 1993.^B
- 5.4 A decision was deferred in June 1997 and a resolution to grant planning permission made in March 1998^C on a proposal for a supermarket, 228 residential units and 162 holiday let units in buildings of 5-12 storeys high. Approval was subject to a legal agreement and the acquisition of 283 Edgware Road. The applicant was unable to acquire 283.
- 5.5 WCC considered the compulsory purchase of 283 in January 2000.^D The matter was complicated by the coming into being in July 2000 of Transport for London (TfL). A further report in June 2000 urged that TfL 'proceed with the necessary measures'.^E It was eventually resolved in January 2003, on Counsel's advice, that no further action be taken on compulsory purchase and that extant resolutions (from 1991 and 2000) be rescinded.
- 5.6 Decisions were deferred in August and October 2001 on a proposal for a supermarket, 226 residential units and 162 holiday let units in buildings of 5-12 storeys high. The Committee was minded to refuse the application but deferred its decision partly to allow the applicant to continue negotiations to purchase 283 and partly so that officers could explore further the possibility of compulsorily purchasing the property. The application was refused in December 2001.^F
- 5.7 West End Green (Properties) Limited acquired the appeal site in May 2002.
- 5.8 A decision was deferred in January 2003^G on a proposal for a supermarket, 291 residential units and 168 holiday let units in buildings of 6/7 and 28 storeys high. In so doing, however, the Committee resolved, amongst other things, that a tower of up to 22 storeys might be acceptable (officers having suggested that 16-20 storeys might be acceptable) and also that partial road widening (283 being excluded from the site) was acceptable. The application was subsequently withdrawn.
- 5.9 Decisions on Options A and B were deferred in August 2003 and again in October 2003.^H Appeals against non-determination were lodged in November 2003.
- 5.10 A resolution to grant planning permission on Option C was made in April 2004.^I
- 5.11 Throughout this time, the majority of the site has been used as a temporary car park, planning permission having been granted in 1993, 1994, 1998 and 2001.

^A It is recorded in detail in Document A1, Section 2, and in Document A16, pp.5-15, paras. 21-79; Document A2, Appendix NDL2, tabulates events in a concise form.

^B Document CD4.

^C Document CD5.

^D Document A2, Appendix NDL3.

^E Document A2, Appendix NDL4.

^F Documents CD6, CD7 and CD8.

^G Document CD11.

^H Documents CD15 and CD18.

^I Document CD30.

6. THE CASE FOR WESTMINSTER CITY COUNCIL

I give here the gist of the case for the City Council. I have adopted the structure and content of the closing submissions, amplified where appropriate by reference to opening submissions, proofs of evidence and what was said at the inquiry itself. Accompanying this report are the opening and closing submissions made on behalf of the Council and all proofs of evidence and other documents produced for the inquiry by its witnesses. They are listed in Annex B. Document B22 is a letter received after the inquiry; it supplied a plan I had seen during the inquiry but did not have amongst the Inquiry Documents.

Introduction

- 6.1 Westminster City Council's support for the redevelopment of this brownfield site is long standing and well documented. WCC recognises, and wishes to realise, the land use planning benefits that would flow from the implementation of a suitable scheme. There have been a number of previous attempts to promote schemes designed to achieve these benefits, though none has so far proved fruitful.
- 6.2 This is an important site – in townscape terms and in terms of the opportunity it presents to improve traffic conditions on a critical route. Any redevelopment scheme must provide an architectural solution appropriate to its context, having regard to the scale and townscape function of surrounding buildings and the views available from nearby parks and squares. It must also assist in easing traffic congestion on Edgware Road, particularly alongside the appeal site where the road narrows appreciably.
- 6.3 The principal obstacle to redevelopment has been the land ownership position in respect of 283 Edgware Road. WCC would prefer 283 to be included in any redevelopment scheme – but not at the cost of preventing long overdue redevelopment of the remainder of the site. Policy TRANS 18 in the emerging UDP is therefore being revised from Policy TRANS 3 in the adopted UDP to allow development, and the associated road widening, to occur in stages.^A The more recent history of negotiations and the position adopted by Mr Dean (the owner, in effect, of 283), not to mention the differences between the appellant and Sainsbury's at the inquiry, suggest strongly that WCC's pragmatic stance is justified.
- 6.4 On the other hand, the acknowledged importance of securing redevelopment of the appeal site does not justify the acceptance of a proposal that is inherently inappropriate in terms of its relationship to the surrounding townscape and conservation areas, or one that would harm important views. Nor does it justify the acceptance of a proposal that would frustrate necessary improvements in London's road network for the benefit of public transport. Equally, it does not excuse the developer from making a sufficient financial contribution to offset the adverse impacts of development.
- 6.5 For those reasons, WCC has decided that, notwithstanding its enthusiasm for the objective of redevelopment of this site, it would not be appropriate to grant planning permission in respect of the appeal proposals. WCC advances two objections in respect of Option A, three in respect of Option B.^B Neither respects the safeguarding line shown for the improvement of Edgware Road in the adopted and emerging UDPs.^C Neither offers

^A Document B11 – p.21, para. 6.8 – and see also Footnote B.

^B The deemed reasons for refusal are most conveniently set out on page 9 of WCC's Rule 6 Statement.

^C Document CD69 – Policy TRANS 3 (B) and Map 20 in the adopted UDP;
Document CD35 – Policy TRANS 18 (A) and Map 4.7 in the pre-inquiry version of the Replacement UDP;
Document CD37 – Policy TRANS 18 (A) in the Proposed Modifications to the Replacement UDP.

sufficient in the section 106 obligation to offset the impact of the development. And, in Option B, the tower is too tall, as is Building E2.

Option C

- 6.6 West End Green's Option C^A demonstrates that each of the shortcomings WCC has identified in the appeals proposals is capable of being overcome while still producing a scheme that is acceptable to the appellant, WCC, TfL, and the Greater London Authority (GLA). The scheme is apparently viable and likely to be implemented if these appeals are dismissed.
- 6.7 Sainsbury's Supermarkets Limited (Sainsbury's) has sought to suggest that the Council's resolution to approve Option C was flawed in a number of respects, and that those flaws would expose to legal challenge any subsequent decision to issue planning permission.^B It seems to WCC that neither the Inspector nor the Secretary of State can reasonably be asked to reach a view on whether Sainsbury's suggestion has any merit. It is a matter that could only be resolved in the High Court if and when a challenge were mounted.
- 6.8 WCC has noted the criticisms made by Sainsbury's solicitors, as well as their more recent invitation to take the application back to Committee for redetermination in the light of the transportation evidence as it emerged in this inquiry. WCC is considering the matters raised by Sainsbury's and has invited both TfL and the appellant to comment before it reaches a view on what, if anything, needs to be done in response.^C
- 6.9 As matters stand, however, WCC's position in respect of Option C is unchanged – that it is acceptable subject to the satisfactory completion of a section 106 obligation.^D

Design Issues

- 6.10 WCC has two design concerns, in respect of Option B only. The first is the height of the proposed tower – 26 storeys rather than the 22 of Option A. The second is the height of Building E2^E – one storey higher than in Option A.

The height of the tower

- 6.11 As a preliminary point, it can be misleading to compare the relative heights of buildings by reference only to the number of storeys. For example, the earlier abandoned proposals were described as a 28-storey tower, which was 101m high; but the Option B proposal, a 26-storey tower, would be only 4m lower. The explanation for the disproportionately small difference in measured height would appear to be that what was described as the first floor in the earlier proposal was simply relabelled as a mezzanine in Option B. In reality, Option B is a 27-storey tower. Thus, it is important to consider the measured height of the proposed tower and compare it to the measured height of the other buildings in the area (rather than simply comparing storey heights).

^A Document A60.

^B Document E15 sets out Sainsbury's views.

^C TfL has responded, in effect completely rejecting Sainsbury's suggestions.

^D And, contrary to suggestions by Sainsbury's, there has been significant progress towards finalising the terms of the section 106 obligation.

^E Building E2 stands on Newcastle Place;

Document A36 – Drawing no. 0203[15.1]P220/A (p.4 of the document) is the proposed site layout and identifies the different buildings by letter and number.

English Heritage

6.12 It is also important to note that English Heritage, whose role it is to advise the Secretary of State on conservation matters, advises that the application be refused.^A In particular, it felt very strongly that the proposed tower was too tall and adopted a harder line than WCC on what would be an appropriate height. Mr Squire's attempt in his proof of evidence to brush aside English Heritage's objection as 'unreasonable',^B because of the proposal's relationship to existing tall buildings, is simply misconceived. English Heritage was fully aware of the existence of other tall buildings in the area and made clear that it did not oppose tall buildings *per se* – or a tall building on this site. Further, to ask the Secretary of State to reject the views of the body set up to provide him with advice on conservation issues on the basis that it is 'prejudiced'^C is simply absurd.

CABE

6.13 CABE's views were explicitly made on the assumption that the building would be sitting in the context of the Grand Union (GU) Tower.^D That seems no longer to be the case^E – and it is not known what view CABE would have taken had it known that.

Retention of 283 Edgware Road

6.14 The appellant's evidence sought to portray the retention of 283 as a positive benefit in design terms. Although WCC has not objected to the scheme on the ground that 283 would remain, the reason for adopting that position is essentially a pragmatic one – to avoid frustrating the redevelopment of the site. The retention of 283 in the longer term is not considered to be desirable in itself.

Policy

6.15 The content of national, London and City Council policy on design, and in particular tall buildings, is not in dispute.^F When considering those policy sources together, there is clear and consistent guidance to the following effect:

- poor design should be rejected – and design may be considered poor if it is out of scale or incompatible with its surroundings;^G
- development that would fail to preserve or enhance the character or appearance of a Conservation Area should normally be rejected;^H
- the settings of conservation areas should also be considered;^I
- high buildings should not be permitted where they are not suited to their context or would have an adverse visual impact upon conservation areas, squares or Royal Parks or the Grand Union and Regents Canals.^J

^A Document B16.

^B Document A4 – p.39, para. 9.3.23.

^C As Mr. Squire suggested in response to a cross-examination question.

^D Document A4 – p.32, para. 9.1.4.

^E Documents B3 and B18 – The GU Tower would stand within Paddington Basin, to the south of the A40. In B3 (p.17 in para. 8.5) Mr Clegg explains that planning permission for the GU Tower is subject to completion of a section 106 obligation and points out that, in any event, the tower might not be built; in B18 he explains that a land swap now being actively considered would mean the GU Tower not being built on the 'approved' site.

^F Document B3 – pp.5-12 provide a fair summary of relevant policy.

^G PPG1 at para. 1.7.

^H Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, Section 4 of PPG 15, UDP Policy DES 7 and Replacement UDP Policy DES 9.

^I PPG15 at para. 4.14, Replacement UDP Policy DES 9 and para. 9.52 in the adopted UDP.

^J London Plan Policies 4B.8 and 4B.9, UDP policy DES 4, Replacement UDP Policy DES 3 and see also CD47.

- 6.16 In addition, an approach to the consideration of tall buildings is specifically addressed in joint EH/CABE guidance on the subject.^A It is common ground between the parties that, when dealing with a tall building, any controversial aspect, including its height, should be 'subject to the very closest scrutiny'.^B

Character of the area

- 6.17 It is common ground that, when considering 'the prevailing character of the area within which [a development] would be located' for the purposes of Replacement UDP Policy DFS 3(A)(3), one should be examining the area to the north of the flyover.^C The prevailing character of that area derives from generally low- to medium-rise development interspersed with a number of tall buildings. There is undoubtedly a distinction to be drawn between the buildings and townscape to the north of the flyover and those to the south. The taller buildings to the south of the flyover, existing and proposed, are much more closely associated with the developments to the west and in Paddington Basin than they are with the townscape and buildings to the north.
- 6.18 On the northern side of the flyover, the tallest buildings in the immediate area are the two Park Estate towers (63m high) and Paddington Green Police Station (57m high). To the south of the Marylebone Flyover is the much taller Metropole (Hilton Hotel) Tower (91m) and the Paddington Special Policy Area (PSPA), which contains a number of buildings of 40-50m with occasional taller elements. The Metropole Tower is of a materially different order of height to anything on the northern side of the flyover. The Paddington Green Police Station tower is only as high as the main part of the hotel. There is a greater concentration of taller buildings on the southern side of the flyover – and they stand closer together in a denser pattern of development.^D
- 6.19 WCC has resolved to grant planning permission for a very tall building, the GU Tower, but only on the basis that its height, bulk, form and design were acceptable in view of the unique circumstances of the site and location.^E It is clear beyond doubt from the circumstances surrounding the decision that it sets no precedent for very tall buildings elsewhere – though that has not stopped the appellant from trying to argue to the contrary.
- 6.20 Matters have now moved on since WCC's resolution and it now seems more likely than not that the GU Tower will never be constructed.^F Mr Squire's protestation^G that it would go ahead if a pre-let could be secured must be tempered by the reality of the situation. There has been no pre-let, despite the best efforts of the developers to market the building, and they are evidently looking for an alternative approach. If all were going according to plan, negotiations over the land swap and discussions about an alternative development would not be taking place.
- 6.21 At this stage, it is not possible to know what might emerge in its place. The e-mail introduced by Mr. Squire^H takes matters no further. It makes clear that, at the moment, all

^A Document CD48.

^B Document CD48 – para. 4.3 – accepted as appropriate by Mr. Squire in cross-examination.

^C Accepted by Mr Coleman in cross-examination; Mr Clegg's description of the site and surroundings is in Document B3 at Section 6 (pp.12/13).

^D Accepted by Mr Coleman in cross-examination.

^E Document A2 – Appendix NDL6, pp.13,26,45 – Mr. Squire accepted in cross-examination that it was clear from the officers' reports and the resolution that the Council resolved to grant planning permission for the GU Tower as an exceptional case in order to provide a landmark signalling the regeneration of Paddington Basin.

^F Document B18.

^G In response to a cross-examination question.

^H Document A43.

that exists is a 'prospective alternative scheme' which is 'at an early stage of development and discussion with Westminster and others'. As WCC has explained, what is being considered is a land swap involving parcels of land *including* the GU Tower site. The extent of the land that is eventually included within the development site will inevitably influence the form of the building. In addition, a different land use is proposed, namely an NHS medical use, with different requirements, priorities and economic considerations that are also likely to be reflected in the building or buildings proposed. Another tall building may emerge; equally, it may not - it is simply too soon to say.

6.22 In any event, it is clearly unsafe to seek to rely on the GU Tower as a justification for the particular height sought in Option B. That is what Mr Squire has done. The late change in emphasis from the GU Tower to the Metropole Tower is not convincing. It was made clear beyond doubt in written evidence that the height of the tower was designed to have a specific relationship with the GU Tower.^A In the absence of the GU Tower, that rationale no longer applies.

6.23 It is also unsafe to assume that a building of materially greater height than the 98m Option B tower will come forward on the GU Tower site. The appeal proposal must therefore stand or fall on its own. It must be of a height that will not shift the townscape emphasis to the wrong side of the Westway. The tallest building in the area should not be located on the north side of the Westway; that would fail to recognise the important difference in townscape terms between the two sides of the road.

6.24 It is common ground that, as one moves north up the Edgware Road, there is an identifiable change in character once one passes the Harrow Road. It is apparent, as the height and nature of the buildings changes, that one is leaving the West End and central London and entering a much more secondary location. That much is reflected in the appellant's use of the term 'gateway to central London', clearly implying that there is a transition east and south of this point marking the start of an area of a different character, i.e. central London.

6.25 The difference in character and physical form between the areas north and south of the flyover is reinforced by the divisive effect of the Westway itself. Mr Squire quite properly acknowledged that the impact and visual influence of the Westway is clearly not confined to the elevated section. Where it is raised, one needs to have regard to its height and the effect that has on its impact. But that is not the only feature that gives rise to visual impact. Opposite Paddington Green it is seven lanes wide, and very busy - the heavy traffic flows contribute to its visual impact, as do features such as the substantial gantry that straddles the road. It is agreed that the road marks a clear northern boundary to the Paddington Basin redevelopment area.^B

Impact of the additional height

6.26 The Inspector and Secretary of State will form their own opinions as to the acceptability of the taller tower from the various important viewpoints agreed with the appellants.^C The visual aids produced by the appellants,^D together with the impressions formed by the Inspector on his site visit, provide sufficient information to allow that judgment to be

^A Document A4 - p.11, para. 6.2.9; p.14, para. 6.5.4.

^B Accepted by Mr Squire in cross-examination.

^C Document G7.11 is the Certified Views Brochure for the Option B scheme.

^D Document A44 is Mr Squire's PowerPoint presentation and enables a ready comparison between the Option A and B Towers, with and without the GU Tower.

made. In WCC's opinion, there is a clearly discernible difference between the two towers in a number of important views.^A

6.27 View 1 is from the western edge of Paddington Green. The importance of views from within the Green is reflected in the Conservation Area Audit.^B The appellant's supporting material itself identifies a significant difference in the impact of the two towers when seen from this viewpoint.^C

6.28 There is a discernible difference between two towers in Views 6 and 7B, Option A being less prominent. The Option B tower would diminish the primacy of the GU Tower or any similar replacement in these views. If there were no GU Tower, or a lower replacement, the landmark building in the area would be in the wrong place.

6.29 In considering the impact of the Option B tower in both local and distant views, the appellant placed particular importance on the relationship with the GU Tower.^D It is clear that, whatever one's views of the acceptability or otherwise of the Option B tower in the context of the GU Tower, the absence of that tower in a number of views would render the impact of the Option B tower unacceptable.

6.30 View 11B shows the view from the bridge over the canal at Little Venice to the west of the appeal site. It is within the Maida Vale Conservation Area. The higher Option B tower would be clearly visible over the foreground trees and buildings and a prominent feature on the skyline. The lower Option A tower would be more in keeping with the scale of buildings already visible and only just visible above the tree line. If the GU Tower were not to be built, the disparity would be increased. Moreover, the only building protruding above the tree line would be the Option B Tower. Evidence in chief sought to place more importance on the view from the towpath (which had not previously been analysed) and tried to downplay the importance of the view from the bridge. This change of emphasis serves only to demonstrate that the absence of the GU Tower would make the impact of the Option B tower in View 11B clearly unacceptable.

6.31 A similar point arises in respect of View 16. The Option B tower would make a clear and distinct break from the tree line whereas the Option A tower would only just break the tree line and would be a much more discrete presence. In the absence of the GU Tower, the Option B tower would constitute a particularly noticeable intrusion against the skyline in this important view.

6.32 In the absence of the GU Tower, the Option B tower would be 6m higher than the next tallest existing building in the area, the Metropole Hotel tower. Until that was pointed out, the appellant had not seen fit to mention, let alone attach significance to, the visual impact of any plant on the top of the hotel tower. When viewed from the street (surely the most important viewpoint), any plant or machinery there may be on top of the hotel tower is imperceptible – but the same is evidently not the case for the appeal proposals.^E The Option B tower would be taller than any other existing building in the area, even if that includes the Paddington Basin. It would become *the* landmark building, but it would be on the wrong side of the Westway to perform that function.

^A Document B3 – p.17 *et seq.*, paras. 8.7-8.19.

^B Document CD43.

^C Document B3 – p.18, para. 8.9, notes what is said in Documents in G6.11 and G7.11.

^D Document A4 – p.23, para. 7.1; p.27 (View 11B) and p.28 (View 16).

^E Document G7.11 – see Views 8, 9B, 11B, 16.

- 6.33 By contrast, the Option A tower, at 85m, would be closer to, and sit more comfortably with, the scale of the buildings in the surrounding townscape. It would still be materially taller than the tallest buildings on the north side of the Westway, but not so much as to appear incongruous or seriously out of character. Increasing the height of the tower beyond this point would necessarily increase the disparity between it and the surrounding townscape. There must come a point when that disparity is sufficiently significant as to be unacceptable. WCC considers that to have been reached with the Option B tower.
- 6.34 The appellant has advanced three main justifications for the additional height of the Option B tower. None has any substance.
- 6.35 Firstly, it is agreed that there is no need for any additional height to make the building elegant. Option A is entirely satisfactory in that regard.^A Secondly, the GU Tower is now unlikely to be built. There is thus no longer any rationale for seeking to relate the height of the Option B tower to the 'shoulder' of that building.^B Even if the GU Tower were to go ahead, it is intended to fulfil a role within the townscape as a landmark building associated with the regenerated Paddington Basin area. That is the basis on which it was approved.^C It must be allowed clear primacy and any tower on the appeal site should be visually subordinate to it. Thirdly, any 'gateway effect' can be achieved just as effectively with Option A. In any event, in the absence of the GU Tower, the opposing 'gatepost' would be missing and the effect would be lost. The appellant made it explicit that the gateway effect was envisaged in relation to the GU Tower.^D The hotel tower was not mentioned and was relied upon for the first time after the news that the GU Tower would not be built.

Building E2

- 6.36 The seven-storey (26m high) Building E2 is proposed to be situated within the Paddington Green Conservation Area and would be immediately behind the existing smaller scale and attractive terrace of 18th and 19th century buildings. New development in a conservation area must preserve or enhance its character or appearance. It is common ground^E that the acceptability or otherwise of E2 should be determined by considering two questions:
- To what extent would E2 be visible in the context of the smaller scale buildings in the terrace?
 - Would E2 have a satisfactory relationship with those buildings?

Visibility

- 6.37 The Inspector's site visits will have confirmed that, even in mid-summer, there are a number of viewpoints within and around Paddington Green from which both E2 and the tower would be visible through the trees. Mr Squire agreed with that.
- 6.38 Whilst the trees reduce the number of views available in the summer, they do not provide anything like a total screen. In general, the closer one moves to the eastern side of the Green, the less obstructed is the view. From a number of places, for example the south-east corner of the Green, an uninterrupted view would be available of E1, E2 and the Tower. The same would be true of views from along the eastern edge of the Green and,

^A Accepted by Mr Squire in cross-examination.

^B Document A4 - p.14, para. 6.5.4.

^C Document A2 - Appendix ND1 6 - pp.13, 26, 45 and Document CD37 p.279.

^D Document A4 - p.10, para. 6.1.6.

^E Accepted by Mr Squire in cross-examination.

when the trees were not in leaf, E2 would be plainly visible from the path across the centre of the Green^A.

Relationship to the terrace

- 6.39 The importance of the views of the Paddington Green terrace seen from within Paddington Green itself is reflected in the Conservation Area Audit; it identifies the important view and also the terrace as a positive townscape feature.^B The importance of the view is in large part because of the ability to appreciate the attractive terrace, which contributes so much to the character and appearance of this part of the Conservation Area. It is plain from the Audit, and as a matter of common sense, that it would not be correct to interpret this as being an important view only from the very spot indicated.
- 6.40 The seven-storey E2 building, in such close proximity to the terrace, would have an overbearing effect. Rising above and immediately behind the smaller terraced buildings, it would dominate them, serve to diminish their role in townscape terms and be overly prominent in views from the Green. At 26m high, it would be 6m higher than the next tallest building in the terrace, the listed Mary Adelaide House. The other buildings in the terrace vary between 8m and 15m high,^C while the proposed building at the southern end of the development, E1, would be 19.5m high.
- 6.41 It would also be a building of utilitarian form. There can be no suggestion that it would have the architectural merit to justify such a dominating relationship over those smaller, more attractive buildings. It should therefore be lower. The suggested 'mediating role' between E1 and the tower would be insignificant in circumstances where the difference is between five and 26 storeys and the 'mediating' building has seven storeys.
- 6.42 It has been suggested that the impact would be acceptable because E2 would in any event be seen against the background of the tower. That might be true from some viewpoints – but the tower would not form the backdrop in many views. In any event, it would be significantly further away from the terrace and would have a different, lighter form.
- 6.43 It has also been pointed out that the earlier Llewellyn Davies proposal would have had an unsatisfactory relationship with Paddington Green but that the Council's officers and members considered it acceptable.^D That is of purely academic interest – what matters is the acceptability or otherwise of the appeal scheme, not an entirely different scheme considered some six years ago.

Road widening

- 6.44 The evidence to the inquiry has not affected WCC's position on this issue. TfL has presented the main transportation evidence. The case can be expressed briefly.

The Development Plan

- 6.45 The starting point is the Development Plan. Whether one is considering the adopted UDP or its emerging replacement, the Development Plan stipulates that there should be road widening at this point, and to the extent required by WCC.^E The replacement UDP policy

^A That much is apparent from the photographs and the CGI provided by Mr. Squire.

^B Document CD43 – p.23, para. 3.37 (with Fig.10) and p.17, para. 3.20.

^C Document B3 – p.24, para. 8.19.

^D Document B17.

^E Document CD69 – Policy TRANS 3 on pp.180-181 is the adopted policy;
Document CD35 – Policy TRANS 18 on pp.232-233 is the emerging policy.

must now attract significant weight, both because the UDP Inspector has endorsed it, and because the Plan is so close to adoption.^A

6.46 The reason for safeguarding this section of road is made clear in the supporting text of both the adopted and emerging UDPs.^B In essence, it is to remove a pinch point that affects the flow of buses along this route. There was an objection made to part (A) of the Replacement UDP policy on the basis that there should be no widening unless it is to facilitate the movement of public transport. The Council responded that widening of the Edgware Road would improve conditions for bus services. The Inspector did not uphold the objection and further concluded that the Edgware Road widening satisfied the fairly strict criteria of TRANS 18(C), which include 'improved public transport'.^C The UDP Inspector did not have the wealth of technical evidence before him that this inquiry has been treated to but his endorsement of the policy should not be dismissed. As this inquiry has shown, the assessment of traffic flows and the impact of different road layouts is not a precise science. Judgment, informed by on-site observation, remains important.

6.47 The presumption should therefore be in favour of road widening as required by the Development Plan – and not to the lesser extent proposed by the appellant. It will be necessary for the Inspector and the Secretary of State to decide whether the appellant's transportation evidence has demonstrated that the section 38(6) presumption (as it has become since 28 September 2004) should not apply in this case.

Lane widths

6.48 The Council has not called modelling evidence of its own. It relies instead on the technical transportation evidence produced by TfL. Lane widths, however, is one of three points of particular concern to the Council. Ultimately, the allocation of road space would be a matter for TfL – but there are certain basic principles that WCC emphasises.

6.49 Unlike many areas of London, the stretch of road alongside the appeal site is not constrained on both sides by existing buildings. There is scope for expanding the width of space available. In the circumstances, lane widths should not be reduced below what is recommended unless there is a compelling reason for so doing. In particular, reducing road widths to a minimum would do nothing to encourage or promote cycling, or make it any safer. The Edgware Road is popular with cyclists^D and the Council wishes to encourage that. Cycling is a sustainable mode of transport strongly supported by policy at national, London and UDP levels. It is common ground that, if the objective is to encourage cyclists and to make their journey safer, rather than more hazardous, bus lanes should be wider rather than narrower wherever possible.^E

Divisive effect of a 6-lane road

6.50 Although WCC has promoted its safeguarding line with an illustrative five-lane scheme, it has never said that six lanes on the Edgware Road would be inappropriate. It does not accept that widening the Edgware Road to six lanes would have a harmful effect on the vitality and viability of the District Centre.

^A See Document B22.

^B Document CD69 – p.181 – Policy TRANS 3(B);
Document CD35 – pp 233-233 – Policy TRANS 18(A) and para. 4.133.

^C Document B13 – Appendix 3 is an extract from the Inspector's report on the inquiry into objections to the UDP review; it summarises the objection and the Council's response as well as giving the Inspector's reasoning.

^D Mr Lewin confirmed in cross-examination that he was not relying on any different figures to those given by Mr Mogridge in cross-examination, ie. 100 cyclists in each direction during the peak hour.

^E A general principle accepted by Mr Lewin in cross-examination.

6.51 The existing situation is one where traffic is already heavy at times, and a disincentive to pedestrians crossing. Pedestrian flows would be likely to increase on both sides of the road as a result of the development. There are, however, a number of examples of successful shopping centres in London with 6-lane highways running through them; one is Finchley Road north of Swiss Cottage. The success of such centres shows that the presence of guard rails and bus lanes, and the restriction of safe crossing to pedestrian crossings, need not harm vitality and viability and are not, in principle, incompatible with a successful London shopping centre. In WCC's opinion, the overall effect when compared to the existing situation would be a marked improvement in the appearance and attractiveness of the area, particularly if 283 were demolished in due course.

Footway width

6.52 One of the reasons why Mr Low recommended that the application should be refused was that the width of the pavement alongside 283 would be too narrow.^A It is already very narrow and constrained. The appeal proposals involve reducing its effective width still further – and at the same time increasing the flow of pedestrians through the pinch point.

6.53 Mr Lewin's level-of-service (LOS) analysis is flawed and does not follow guidance.^B Even on his analysis, however, the effective width of the footway would be reduced to 1m. It may be argued that, even if the guidance is applied correctly, the LOS figure will remain within an acceptable range.^C If that is right, however, it simply illustrates the importance of applying common sense and judgment to this sort of assessment.

6.54 The 1m wide pinch point would be situated between the northbound bus stops and the supermarket entrance and residential accommodation.^D In the evening peak, many, if not most, of the northbound pedestrians would likely be coming from the bus stop. They could be expected to arrive in platoons, rather than being evenly distributed. If a shopper carrying shopping bags were to be heading southbound through the pinch point at the same time as someone heading north, there would be insufficient space for the two to pass without one having to change course. The same would be true in the case of a person with a pushchair, or in a wheelchair. Common sense dictates that the space is inadequate to cope with what would likely be fairly heavy flows of traffic at peak times.

Section 106 contribution

6.55 The issues in dispute are now relatively limited. The correct approach is set out in Circular 1/97. A number of the individual components that make up the overall figure requested by WCC are now agreed. It may be that the process of identifying an appropriate level of contribution would be easier if WCC had adopted formulae that could be applied in all cases – but that is not a requirement of Circular 1/97 and does not prevent appropriate figures being arrived at by case-specific analysis.

6.56 The overall figure WCC is requesting falls below the range of contributions justified by Mrs Coulson's evidence.^E A higher level of contribution could be justified and the sum of £750,000 requested by members must be considered reasonable in that context.

^A Document B12 – p.11, para. 4.30.

^B Document CD53.

^C The approach taken in re-examination of Mr Lewin.

^D A situation that would be further complicated if 283 were ever brought back into active use in the manner shown in Document A37 at 16A and 16B.

^E Document B8 – Table 1 on p.24 of Mrs Coulson's proof of evidence draws together the various elements considered in that proof and arrives at a range between £888,000 and £951,000.

6.57 Three points of substance remain to be determined. The first, and most important by far, is the level of contribution to medical facilities. The second is the level of contribution to educational provision. The third is the level of any contribution towards environmental improvements to the Church Street market and whether such a contribution is necessary.

Medical facilities

6.58 In principle, it does not appear to be disputed that the influx of new residents will give rise to greater demands on existing medical facilities. Nor does it appear to be disputed that some contribution should be made to offset that impact. WCC says that £400,000 would be appropriate. The reason for that is because the Westminster Primary Care Trust (PCT), the public body charged with responsibility for administering and providing health care facilities in this part of London, has advised that that is what would be needed to offset the impact. The PCT is undoubtedly the most authoritative source of advice on this matter. It is best placed to understand the existing state of services and facilities in the area and the likely additional demands resulting from a development of this sort. It has explained its reasoning.^A Its advice should be accepted.

6.59 In practice, the only really important difference of view between the appellant and the PCT is over the appropriate average occupancy figure of residential units. The Council supports the PCT's figure for the reasons set out in its fax dated 19 July 2004. The GLA average household size is an inappropriate figure because it measures existing levels of occupancy across all types of accommodation rather than what may be anticipated from a new development that includes 35% affordable housing. The occupancy rates for the affordable housing are likely to be higher than for the market housing because WCC will have 100% nomination rights over the affordable units. The vast majority are likely to be occupied by families with children on the basis of a 2-bedroom flat being suitable for four persons, and a 3-bedroom flat being suitable for five persons.^B

Education

6.60 In evidence in chief, Mr de Lotbiniere accepted that the level of contribution per pupil sought by WCC was in line with his experiences elsewhere. It was only when it was pointed out to him that he had mistakenly inserted an earlier figure into his calculations that he changed his evidence. There is no good reason for the change. The absence of a generalised borough-wide formula cannot logically serve to invalidate a bespoke calculation made by the person directly responsible for education in this area on the basis of the actual predicted impact of this particular proposal on local schools. If the basis for the calculation of the contribution is accepted – and no alternative basis has been advanced – the contribution for Options A and B should be £218,000 and £256,000 respectively.^C

Church Street market

6.61 Church Street is the most deprived area in the City. Its residents suffer disproportionately from high unemployment, low educational attainment, heightened fear of crime and poor health. The market is the defining feature of the area and key to the vitality and viability

^A Document B9 – Appendix 8 – letter dated 27 April 2004;
Document B10 – the first para. adds to that
Document B15 – fax dated 12 July 2004.

^B Document B8 – pp. 16-17 – paras. 5.9-5.10, though dealing with education, sets out assumptions on occupancy.

^C Document B10.

- of the District Centre. It has been declining in recent years. The overall vitality and viability of the District Centre is neutral and its environmental quality is low.^A
- 6.62 WCC wishes to assist in the regeneration of the area. Upgrading the physical space in which the market operates is a key element in achieving that. An Environmental Masterplan^B was published in April 2003 following a comprehensive analysis of the area undertaken by consultants working in partnership with local people. Central to the Masterplan are a number of recommendations on how to upgrade the market and the physical spaces around it. The same approach is reflected in the Church Street Action Plan,^C produced by WCC. Funding for those works is not assured – but one important source of funding is anticipated to be the section 106 obligation associated with the redevelopment of the appeal site.
- 6.63 WCC considers that the proposed development should contribute towards the cost of some of those improvements and has identified a specific target for funding. It is simply not correct to suggest that WCC has not specified what it would spend the money on.^D Mrs Coulson states clearly that ‘The City Council is not expecting that the appellant should fund all the identified improvements to the Church Street market, and for the purposes of these appeals, it is considered that funding in the region of £100,000 would be reasonable, in order to address improvements to the entrance of the market, new signage, new street furniture, lighting and improvements to the projecting canopies.’^E
- 6.64 The rationale for seeking a contribution towards these improvements is that, without them, the proposed supermarket development can reasonably be expected to take business away from the market. The effect of that would be to harm the vitality and viability of the market, the key attraction in the District Centre. That would constitute harm to an interest of acknowledged importance and would be contrary to UDP policy.^F It would also run counter to the aim of regenerating the Church Street neighbourhood. That effect, and the potential objection to the development on those grounds, would be overcome if the physical environment of the market could be improved. In those circumstances, a contribution is not only necessary but also relevant to planning and directly related to the proposed development. The scale of the contribution sought is fairly and reasonably related to the scale of the development proposed. It is reasonably required.

Conclusion

- 6.65 For the reasons set out above, the appeal proposals do not accord with the development plan. The resulting harm to interests of acknowledged importance is such as to outweigh any other material considerations. Accordingly, Westminster City Council concludes that the appeals should be dismissed.
- 6.66 In the event that either Option A or Option B were to be allowed, careful note should be taken of the provisions of clause 1.2(b) of the Unilateral Undertakings and the need to make a clear statement in the report and decision letter in respect of the obligations and financial contributions contained therein.

^A Document A1 – p.73, paras. 5.205 and 5.206.

^B Document CD40.

^C Document CD41.

^D Suggested by Mr de Lotbiniere in response to a cross-examination question.

^E Document B8 – p.19, para. 5.17.

^F Documents CD69 and CD35 – adopted Policy SS10 and emerging Policy SS12 both provide that planning permission for major retail developments in district centres will be granted if the proposal would not cause harm to the vitality and viability of shopping areas or centres in the city.

7. THE CASE FOR TRANSPORT FOR LONDON

I give here the gist of the case for Transport for London. I have adopted the structure and content of the closing submissions, amplified where appropriate by reference to opening submissions, proofs of evidence and what was said at the inquiry itself. Accompanying this report are the opening and closing submissions made on behalf of Transport for London and all proofs of evidence and other documents produced for the inquiry by its witnesses. They are listed in Annex B.

Introduction

- 7.1 On 11 February 2004, the Mayor of London, acting on the advice of Transport for London (TfL), wrote to Westminster City Council (WCC) advising that, had appeals not been lodged, he could have directed refusal of the appellant's proposals on two grounds – the excessive level of car parking included within the proposed development and the failure of the proposals to set back the building line to allow for road widening. Although this inquiry has ranged over many aspects of the proposals for development of the appeal site, the involvement of TfL has been limited to the consideration of those two issues.
- 7.2 TfL's objective is to ensure that planning decisions are made which promote and ensure that transport choices are as sustainable as possible; and that the attraction of public transport is increased. In this regard, more road space must be provided for London's buses so that they can move freely and save on journey times. There is no dispute that this overall objective is underpinned by a strong policy framework.^A
- 7.3 Colin Buchanan & Partners (CBP) was commissioned by TfL to carry out an assessment of the proposed development and its report^B forms the basis of the evidence to the inquiry.

Car parking

- 7.4 The 223 parking spaces proposed in the schemes being considered at this inquiry are considered to be excessive. They are contrary to the express policy in the London Plan which regulates parking levels.^C This number of spaces would also attract movements in such numbers as to require an additional right-turning stage in the light-controlled junction of Edgware Road and Church Street. That would slow and impede the flow of buses, contrary to the overriding policy objectives above.
- 7.5 In considering the applicable parking standard, account should be taken of the Public Transport Accessibility Level (PTAL) score of the location. It is not disputed that the PTAL score is 6, the highest it could be and a factor reducing the amount of parking that should be provided. Nor is it disputed that, if this factor is taken into account, then, applying that to the size of the proposed store, the level of parking should be in a range of 130-199. The appellant's scheme exceeds this range and is therefore contrary to policy.

^A Agreed by Mr Lewin in cross-examination; the policy framework lies in PPG13 at paras. 4, 6 and 74 and also Document CD32 – the London Plan – Policies 3C.13, 3C.15, 3C.16 and, in particular, Policy 3C.19, which requires active promotion of the London bus network and priority to be given to its continuing development, including 'the allocation of road space and the high levels of road priority required for buses on existing or proposed routes'.

^B Document CD55 – dated April 2004. Also included in the Inquiry Documents are earlier drafts – Document D8, dated 16 December 2003 (bound in with it is an audit of the PARAMICS model built by Savell Bird & Axon (SBA) for Sainsbury's), and Document D9, also identified as 'Final Draft', dated March 2004.

^C Document CD32 – Policies 3C.22 and 3C.23 and Annex 4.

- 7.6 The appellant recognises this but claims that the policy should be applied flexibly in its favour, having regard to two factors. The first is that this is a regeneration site and that such sites 'need a helping hand'.^A The second is that a greater level of provision should be made to reflect the fact that the site is within a District Centre and the parking thus serves a wider function.
- 7.7 On the first, there is no evidence that these proposals need an additional number of parking spaces to secure that development takes place.^B Nor is it contended by the appellant that Option C, with 180 spaces, cannot be developed viably. On the second, TfL's approach is that the 180 spaces which, on CBP's recommendation, are considered to be an acceptable level of provision, are towards the upper end of the range derived from the London Plan's standard and that there will be an opportunity for this number of spaces to be shared, providing an opportunity for linked trips, potentially reducing the need for on-street provision and boosting the vitality and viability of the District Centre.^C
- 7.8 The 223 spaces which the appellant seeks are thus contrary to policy – and there are no circumstances which would justify a relaxation of the policy to allow an increased number to be provided. Indeed, TfL considers that an increase in the number of parking spaces would have a harmful effect upon the operation of the Edgware Road and Church Street junction, creating congestion and delaying buses. Far from supporting the role of the District Centre, this would more likely have a harmful effect by reducing its attraction.

Effect on trip generation

- 7.9 There is no controversy in the proposition that the number of car trips generated by a proposal is a function of the number of car spaces provided. Excessive parking would encourage increased car trips to the appeal site, with a consequential adverse impact upon the traffic network.
- 7.10 In the case of these proposals, CBP maintains that the increased volume of right-turning traffic (towards the foodstore car park) from north on Edgware Road, in the evening peak, would create the need for an additional separate right-turn stage into Church Street. The existing level of right-turning traffic at the junction supports this assessment.
- 7.11 CBP considers that, in order to avoid the need for a separate right-turn stage, the level of turning movements needs to be reduced so that the total number of passenger car units (pcus) per hour turning right into Church Street from Edgware Road is no more than 115. In its April 2003 Transport Assessment (TA), Symonds, the appellant's consultant, forecast that the level of right-turning traffic at this junction would be 151.^D
- 7.12 With a 90-second cycle time (40 cycles per hour), this would mean that turning traffic would be equivalent to an average of 3.8 (say 4) right-turning movements per cycle, in accordance with Symonds' original assessment; or 2.9 (say 3) in accordance with the figure of 115 suggested by CBP.^E
- 7.13 Appendix G of the CBP Review,^F extracted and analysed in some detail at the inquiry, shows that the reduced trip rates with the assumption of 115 right turning movements (a reduction of 30% of the level assumed in the TA), would lead to a maximum accumulation

^A The phrase used by Mr Elvin.

^B Agreed by Mr Lewin in cross examination.

^C Document J36.

^D Document G6.3 – Figure 7 – CBP's review (Document CD55.1) considers at para. 4.1.13 that it should be 153.

^E The actual cycle time is 88 seconds but that makes no effective difference to the calculations.

^F Document CD55.2 – also Document A27.

of 166 cars within the car park. If an allowance of around 10% is made for circulation, which CBP considers appropriate, then this leads to a total of 180 spaces, which was the figure recommended to TfL by CBP as the appropriate size of car park for these proposals.

- 7.14 There is no dispute that, if the number of parking spaces were 180, there would be no requirement for a right-turn stage. The dispute focuses on whether a car park with 223 spaces would result in a greater number of movements per cycle, requiring the additional right-turn stage. Mr Lewin, contending that it would not, referred to assumptions which he maintained justified a reduction in turning traffic levels without reducing the number of shoppers' car parking spaces.
- 7.15 The first assumption is that an allowance should be made in the parking accumulation for the number of vehicles already present at 0800.^A He assumes that 35 vehicles would be present, based upon two things – a survey of a much larger Sainsbury's store in Camden in June 1991, which showed 20 vehicles present,^B and the anecdotal evidence of that store's manager. Even if it were appropriate to have regard to such evidence, it is clear that the figure of 35 is too large. Comparing the size of this proposed store with Sainsbury's Camden store, the figure would be 16. Even so, it is inappropriate to make any reduction of trip generation rates on such a basis. One cannot, in the absence of current survey material related to comparable stores, make any such assumption. There is certainly no obvious reason why 35 spaces should be occupied at Church Street at 0800. And there is anyway no reason why this should influence subsequent trip rates.
- 7.16 The other assumption is that 10% of the spaces will not be in use at any one time due to circulation – so 23 spaces should be deducted. The problem with this is that it assumes that the supermarket operator will undertake to show a 'car park full' sign on the Edgware Road when the car park has only reached 90% of its capacity. This seems unlikely; and no evidence has been provided to indicate such willingness. In any event, if one allows for 10% circulation but an accumulation of only 20 cars at 0800 hours, the number of right-turn movements into Church Street would still exceed the figure of 115 that would trigger the need for a separate right-turn stage.^C
- 7.17 In all this it has to be borne in mind that TRANSYT, on which the assessments on both sides are based, operates on simple averages. In reality, there will be considerable fluctuations. There will clearly be times during the busy periods when greater numbers will be turning right than either consultant has assumed. In these circumstances, a right-turn stage would undoubtedly be required and would be called. If the car parking level were reduced to 180, as proposed by TfL, not only would this then be consistent with the London Plan parking standard, it would also avoid the need to introduce that additional right-turn stage.
- 7.18 Although this inquiry is concerned with Options A and B, the appellant is also promoting another application, Option C. That scheme provides 180 car parking spaces and is therefore compliant with the Mayor's parking policies; and it avoids the need for the additional right-turn stage. Option C also provides for the redevelopment of the whole site and thus, if implemented, would contribute substantially to the regeneration of the area. There is no suggestion that Option C is not viable.

^A Document CD55 – the table in Appendix G assumes no cars already parked at 0800.

^B Document D12 – 08:00-09:00 in the table shows arrivals of 129, departures of 24, but an accumulation of 125.

^C Document D13 – Mr Mogridge's hand-written note explains how he calculates that right-turn movements into Church Street, allowing 10% circulation and 20 accumulation, would come to 121.

7.19 One feature of great significance in relation to Option C is that the proposed development would be set back to the extent indicated in the UDP and thus provide an opportunity to widen the Edgware Road. By contrast, the proposals before the inquiry are not set back to the same extent. They would not permit widening in accordance with the UDP; and so, if implemented, they would frustrate, indeed prevent, that widening taking place. The opportunity to provide bus lanes along this length of the Edgware Road would be lost.

Effect on bus journey times

7.20 Sainsbury's has argued that widening of the Edgware Road limited to frontage of the appeal site, i.e. between Newcastle Place and Church Street, would be beneficial to the flow of buses. However, CBP's analysis is that widening along the site frontage would not be justified at present. The disbenefit caused by increased stopping times to clear the widened pedestrian crossing at Broadley Street^A is greater than the potential benefit to be gained from just 120m of additional bus lane to the south of Church Street.^B TfL accordingly disagrees with Sainsbury's on this aspect of the case.

Widening of Edgware Road

7.21 More extensive widening of the Edgware Road, whether to St John's Wood Road or to Maida Avenue, would provide a significant benefit and justifies the setting back of buildings to enable a full widening to six lanes to be achieved. TfL therefore objects to the proposals in Options A and B because they ignore the UDP safeguarding line.

7.22 CBP has provided an illustration of how full 6-lane widening might be achieved. It is, however, simply an illustration. It is not intended to comprise any sort of worked-up scheme. There has been some criticism of the Mayor's approach in deciding to pursue an objection on this basis, after having adopted a different approach at earlier stages of the consideration of the Replacement UDP. However, the issue of bus lane priority in the Edgware Road is a matter of concern to the Mayor and was the subject of discussion between the Mayor and TfL. This led to the decision that full widening along the corridor would be likely to achieve significant benefits in bus journey time savings. CBP, which was already advising TfL, was asked to analyse and report. Its report confirms that real bus time savings would, indeed, be achieved.^C

7.23 TfL is therefore now pursuing a strategy to improve bus journey times along the Edgware road corridor and opposes development that would prejudice full widening to six lanes. But matters are still at a very early stage. There is much to do before any scheme could be fully implemented and the process that would be undertaken, including the production of studies and full consultation, would be extensive.^D

7.24 The fact that matters are at an early stage does not mean that the policy the Mayor wishes to pursue should be discounted. It is one of the Mayor's functions to keep issues such as those relating to the free flow of buses under review and, where he considers it relevant to do so, to adopt appropriate policies. It is nothing to the point that a policy to facilitate the movement of buses by widening Edgware Road is not in the London Plan. That is the

^A Document D10 estimates the additional delay due to the widened crossing at about eight seconds.

^B Document D11 estimates a disbenefit at an average bus speed of 15kph or lower (the existing average being 12.5kph) but a gain of two seconds at an average speed of 17.5kph, increasing as average speed increases.

^C Document CD55 – in particular, Tables 1-34 within the text in chapters 2-5 of Document CD55.1

^D Mr Richards, in evidence in chief, outlined a process of studying the options (6-lane widening and variations), preparing a business case and environmental assessment, gaining Board approval and consulting widely before any action could be taken, which could not be earlier than some time in 2006.

Mayor's Spatial Development Strategy for Greater London and is not concerned with detailed or site-specific matters such as a particular road widening scheme. The Mayor's policy on this matter is therefore a factor which should be given considerable weight.

- 7.25 The implementation of a full widening scheme would be entirely in accordance with policy, and specifically with London Plan Policy 3C.15, as a measure which would improve conditions for public transport. Any potential conflict with the policy could be avoided by the adoption of measures to avoid increasing capacity for general traffic.^A
- 7.26 The appellant has criticised TfL for pursuing this objection, contending that, as matters are at such a very early stage, no proper consideration has been given to the effects of road widening, including the necessity compulsorily to purchase, and then demolish, a large number of properties. TfL accepts that matters are indeed at an early stage but considers that the effects of such widening proposals are exaggerated by the appellant, including overstating the numbers of properties that would have to be demolished.
- 7.27 Moreover, it is wrong to approach the matter on the basis that the scheme would have to be implemented in one go. An incremental approach would be most likely to be pursued. In this respect, it should be noted that the buildings have already been set back within the Sheldon House complex, which could enable a further 60m of bus lane to be provided immediately to the north of Church Street, in combination with that in front of the appeal site to the south of Church Street. Further to the north, buildings are already set back to a similar building line in front of Parsons House, which could provide a further 150m of bus lane. So far as the properties to the south of Parsons House are concerned (those to the north and south of Cuthbert Street) their nature and condition suggests that it is quite reasonable to anticipate that a major redevelopment scheme could come forward, enabling a set-back of the building line to be achieved. It can be seen from all of this that there are significant stretches of the Edgware Road where sufficient width already exists or could easily be provided. The frontage at the appeal site may be added to this, Option C demonstrating how a viable form of development can take place with a setting back of the buildings to conform to the UDP safeguarding line.
- 7.28 For the appellant, Mr Lewin sought to demonstrate how bus lanes could be provided in the 5-lane or 6-lane schemes he illustrated, without widening to the UDP safeguarding line. However, those schemes would be at the expense of compromising on the width of the traffic lanes that would be provided; bus lanes would be 3.0m wide compared to the TfL minimum of 3.5m, thus jeopardising road safety, particularly for cyclists. They would also involve cutting into the widths of the footway. Neither is acceptable to TfL. There should be no compromise on the overall objective of providing extra space for buses in an environment that is safe for all, including cyclists and pedestrians.

Conclusion

- 7.29 In conclusion, it may seem that an approach which is looking towards the full widening of the Edgware Road from Harrow Road to Maida Avenue, and perhaps further to St John's Wood Road, is extremely ambitious. However, in his objective of seeking to encourage and promote public transport, particularly buses, the Mayor is looking for radical improvements. The redevelopment of the appeal site provides the opportunity to achieve real progress in his realisation of that objective, by enabling significant savings in bus journey times. The opportunity exists now. If development of the site were to take place without taking the securing this opportunity, then it is effectively lost for good. TfL

^A Document CD32 – the second bullet point within Policy 3C.15 (p.120) resists increases in net traffic capacity.

therefore submits that the appeals should be dismissed on the ground that they frustrate the prospects for achieving a full road widening scheme. So far as the number of car parking spaces is concerned, TfL considers that the point can be met by the imposition of a condition limiting the number of spaces to be provided within the development to 180.

8. THE CASE FOR SAINSBURY'S SUPERMARKETS LIMITED

I give here the gist of the case for Sainsbury's Supermarkets Limited. I have adopted the structure and content of the closing submissions, amplified where appropriate by reference to opening submissions, proofs of evidence and what was said at the inquiry itself. Accompanying this report are the opening and closing submissions made on behalf of Sainsbury's and all proofs of evidence and other documents produced for the inquiry by its witnesses. They are listed in Annex B.

Introduction

- 8.1 Sainsbury's has been involved with this site for many years. It obtained an option over 283 Edgware Road because it believed that inclusion of that property was necessary to the proper development of the overall site. It believes that there are sound transportation and design reasons for refusing the appeals. Most relate to the retention of 283. But there are design reasons unrelated to the issue of 283.

Transportation

The underlying transportation issue

- 8.2 The underlying transportation issue relating to this site has not been properly considered until this inquiry. Most previous discussion has been clouded by issues relating to road widening policy proposals and dominated by concerns about ransom. The underlying issue does not depend on policy proposals for road widening or raise the prospect of a public body paying a ransom.
- 8.3 The underlying issue is a simple one:
- the appeal proposals will have an adverse effect on traffic conditions in the vicinity of the site and on bus movements in particular;
 - those effects of the proposals should be mitigated;
 - full widening and the provision of a north bound bus lane from the Harrow Road to Church Street would on its own provide significant mitigation;
 - no other satisfactory mitigation has been proposed;
 - the removal of 283 is necessary to enable mitigation of the traffic effects of the appeal proposals and permission should not be granted without that removal being secured.
- 8.4 No-one has suggested that full widening and a northbound bus lane to Church Street would be incompatible with whatever proposals for improvements further north may come forward in the future. However, it is not necessary in relation to these appeals to consider such potential proposals.
- 8.5 TfL agrees^A that, if widening with a northbound bus lane to Church Street provides mitigation in its own right, rather than being entirely dependent on additional works to the north, then it would clearly be right to require it.^B

^A Agreed by Mr Mognidge in response to cross-examination by Mr Hicks.

^B In which case there would be no risk of TfL having to pay ransom.

Assessment without relying on models

- 8.6 Sainsbury's believes that this issue can be determined without relying on models – and that there is no modelling evidence which could lead to a different conclusion to that reached without it.
- 8.7 It is clear from observation that, in the existing situation, what happens to the north of the Church Street junction affects the performance of that junction. There appear to be a number of different constraints acting either individually or in conjunction.
- 8.8 It is clear from observation that, in the existing situation, there are periods when the Church Street junction is affected to the extent that there is significant queuing for north-bound traffic. This delays buses because they do not have a north-bound bus lane from south of 283 up to Church Street.
- 8.9 It is clear from observation that the extent and frequency of significant north-bound queuing varies from day to day and from hour to hour. It is not restricted to the evening peak hour; indeed, it often appears to be worse earlier in the afternoon. Delays to buses outside the peak hour are also important.
- 8.10 It is clear from observation of the current performance of the junction and a general understanding of the proposals that the proposals will result in less green time being given to northbound traffic through the Church Street junction. A combination of providing more time for vehicles to exit from Church Street, more time for vehicles to turn right into Church Street^A and more time for pedestrians to cross Edgware Road will mean there is less green time in each cycle for north-bound traffic.
- 8.11 That will inevitably mean that the extent and frequency of significant north-bound queuing will increase. That will mean that bus delays will increase.
- 8.12 It is also clear from observation, and common sense, that a bus lane from the Harrow Road junction to the Church Street junction would significantly reduce delays for buses at times when there is queuing back. It would mean that buses would have an unimpeded trip between the bus stop to the south of 283 and the bus stop north of the Church Street junction instead of being held up by the queue of general traffic. The short length of road without a bus lane immediately south of the Church Street junction would not cause buses a significant problem because it would be short and they would only travel straight ahead while general traffic would have to merge into the inside lane.^B Beyond the Church Street junction, the inside lane up to the bus stop is generally relatively clear. The result would be that buses will be able to join general traffic north of the northerly bus stop sooner than they would without the bus lane. The bus lane should also eliminate the need for buses to wait for more than one cycle of the lights, which causes particularly significant delays.
- 8.13 The increase in the extent and frequency of significant northbound queuing back caused by the appeal proposals will also make it even more important that the area of road between the Harrow Road and Church Street is used as efficiently as possible. This is likely to be particularly important because TfL will be reluctant to allow extra green time for traffic exiting Church Street if it would cause problems for north-bound through traffic. It is clear from observation that that area of road is not currently used efficiently.

^A Whether by increasing the lag at the end of the green phase or by a specific right turn phase being called up.

^B In contrast to the current position at 283 where it is the buses that have to merge into the general stream of traffic; only left-turning traffic would be likely to enter the left-hand lane.

The inside lane beyond 283 is often not fully used either in relation to queuing capacity or in terms of maximising the delivery of vehicles to the stop line when the lights are green.

- 8.14 There therefore appears to Sainsbury's to be a clear case for the provision of full widening, with a north-bound bus lane, to mitigate the effects of development.

Modelling

- 8.15 The fundamental problem with all the TRANSYT modelling of the Church Street junction is that it does not model the effects of constraints to the north of the junction.
- 8.16 TRANSYT stacks queuing vehicles vertically and cannot therefore model at one junction the effects of queuing back from another junction. It can be set to give a warning when a queue is likely to have an effect, but it cannot model that effect. In many cases this does not matter – but here it does. The TRANSYT runs produced by TfL and the appellant show, both from the calculated queue lengths and the warnings,^A that there would be such an effect – but they cannot and do not model it.^B That is essentially why they fail realistically to model either existing or future conditions at the Church Street junction.
- 8.17 It is why Sainsbury's used a PARAMICS model.^C In the end, however, while Sainsbury's believes that the PARAMICS model does do a better job than the TRANSYT model, it still does not model the existing situation well.
- 8.18 The failure of TRANSYT to model the effect of the northern constraints is a fundamental problem in this case and fatal on its own. If the current pressure on the junction and the queuing back is not reflected in the results, the model will inevitably fail to produce reliable results for the future. This is especially so because the adverse effects from incremental pressure are likely to be proportionately greater if the junction is already, at times, at or near a critical point. In particular, TRANSYT cannot and does not provide a proper assessment of the benefits of a bus lane without modelling the queue backs.
- 8.19 There are other problems with the appellant's and TfL's TRANSYT modelling. For example:
- the appellant uses grossly inflated and unrealistic saturation flows for the northbound flows to try to compensate for the reduction in green time for the northbound link;^D
 - TfL does not give extra time for the Church Street entry and so ends up with huge and totally unacceptable queues on that entry.

^A Document CD55 – Figure 3 in CD55.1 shows links 1031 and 1032 from node 222 (Church Street) to node 103 and link 4381 from node 103 to node 438 (Frampton Street pedestrian crossing); Appendix E in CD55.2, on pp.10+12 of the second run (appeal proposals, partial widening, 223-space car park, pm peak) shows queues on those links in the 'mean max. (pcu)' column; also, on p.10 of all runs, links 1031 and 1032 show the warning '+' sign in the 'average excess (pcu)' column

^B Mr Lewin said that it was the job of the modeller to make sure that the queue does not go back through another junction; in this case, both he and TfL have failed to achieve that.

^C Document E23 comprises three PARAMICS simulations (existing, partial widening and full widening) for the evening peak hour; they supersede the CDs at Appendix H of Document E/JF/2 and with Document E/JF/4; Mr Foot explains in Section 8 of Document E/JF/1 why he chose PARAMICS to model the network and in Document E/JF/4 what he sees as the limitations of TRANSYT; Appendix E, corrected by Document E/JF/5, also explains refinements made to the PARAMICS model after submission of the original evidence. TRANSYT remains the model used by TfL for London's strategic road network and Document 137, TfL's guidance note on micro-simulation, identifies some of the limitations of PARAMICS and other models.

^D Sainsbury's also does not believe that the appellant has allowed a big enough increase in green time for the Church Street exit – but says it is not critical to the argument.

8.20 Sainsbury's does not, therefore, believe that the modelling put forward by TfL and the appellant in any way alters the conclusions reached in the preceding section:

- it confirms that the constraints to the north will affect the performance of the Church Street junction but does not model those effects;
- it confirms that green time will need to be reduced for the northbound movement in order to cater for the proposals;
- it does not demonstrate that the proposed result would be acceptable because it does not model the existing situation properly; in addition, in TfL's modelling, it demonstrates major failure on the Church Street arm and, in the appellant's modelling, it uses ridiculously high saturation flows;
- it cannot be relied upon in the assessment of a bus lane in this location because it does not model the queues that exist and which would get worse with the proposal.

Conclusion on transportation issue

8.21 If widening and a bus lane are necessary, then they should be secured. The current section 106 obligations do not secure the inclusion of 283 so the appeals should be dismissed.

8.22 In any event, if full widening is to be required and 283 removed, then the appeals should be dismissed to allow for reconsideration of the design – even if design is not thought a sufficient reason on its own for dismissal.

Design

8.23 Apart from the general approach to design, the main points to be considered are the retention of 283 Edgware Road, the relationship of the proposals with the Conservation Area and permeability.

Approach to design

8.24 The Government is placing increasing emphasis on good urban design. This now clearly involves raising the standard of design and not merely weeding out poor design.^A On an important mixed-use site such as this, Sainsbury's believes that the urban design should be of the highest quality and that that is what the Secretary of State should insist on. That is certainly the objective of the London Plan and the emerging UDP.^B The London Plan seeks to promote 'world class' design and the emerging UDP seeks the 'highest standards' of urban design.

8.25 The issue in this case is whether the proposals do indeed represent urban design of the highest standard. The Sainsbury's application is not relevant in the sense that the decision in this case should not involve a choice between it and the appeals schemes. It is relevant because it may help to illustrate that there are other more appropriate approaches to some aspects of the urban design for this site. Sainsbury's accepts that its scheme is still work in progress in that the discussion and consultation process is at an early stage. Nor does it suggest that its scheme is necessarily the only alternative approach – but that does not affect its relevance for that purpose.

8.26 Sainsbury's also accepts that it is the result rather than the process that really matters. It seems, however, that the process may be partly to blame for the result. It appears that too much reliance may have been placed on previous schemes as the starting point, and that

^A Document E19 para. 17 of the decision.

^B Document E/GJ/1 paras. 3.5-3.43 summarise the various references to good design.

there may have been too rigid an adherence to the concept of a scheme based on 'pavilions', or 'mansion blocks', of equal height around three sides of the rectangle. Such a concept limits the possibilities in terms of the relationship with the conservation area and also permeability. There is little evidence of a comprehensive analysis of the constraints of the site or the consideration of alternative approaches – and the exclusion of 283 appears to have been a 'given'.

Retention of 283

- 8.27 The decision as to whether the retention of 283 in conjunction with the appeal proposals is consistent with the highest quality of urban design must be based on the assumption that 283 will remain for at least a significant period of time.^A And the obvious reaction of anyone seeing the result of the appeal proposals, if built, would be to ask why on earth 283 had been left there. It is clear that it is not of a quality to justify its retention. And it is clear that it would have no proper relationship with the proposed scheme. It would be perceived universally as a failure of planning and urban design.
- 8.28 The relationship of the tower to the area around its base is poor in any event – but leaving a 4-storey remnant of a terrace within a few metres of the base of a tower of over 20 storeys clearly must produce a poor design. This is an important corner of the site and 283 would both obstruct views north and south along Edgware Road and appear anomalous in them. In particular, it would obstruct views of the scheme from the south and impair the visibility of the entrance to the supermarket from the south.^B It would also be a visual and physical barrier between the bus stop and the superstore entrance. Whatever the position in relation to the theoretical capacity of the pavement past 283, it would clearly not be good urban design.
- 8.29 The retention of 283 would make Newcastle Place even less inviting than it is at present. It would make the viability of the shops behind it on Newcastle Place (in the base of the tower) even less likely. It would raise security concerns. The public space created by its retention would be poor. It would, in practice, relate only to the supermarket access, with cramped access from the south and Newcastle Place. The building would have no proper relationship with the other sides of the space.
- 8.30 Even if 283 were removed some time after the proposal had been built, its initial retention would have represented a significant lost opportunity in terms of the overall design of this important corner of the proposals.^C It would be very difficult to do much more than leave a hard landscaped gap in its place. The idea for a replacement pavilion^D bears no proper relationship to the rest of the scheme and is inappropriate in terms of size and function for this important location.
- 8.31 Put simply, the retention of 283 in conjunction with the appeal proposals falls clearly into the category of obviously poor urban design and falls well below the policy requirement of the highest standard of urban design.

^A Sainsbury's option will remain in place and will not be worth exercising at the price being offered by the appellants; Mr Dean is unpredictable and is quite likely to hold on.

^B There would be no effective visual link with the shopping south of the flyover.

^C Which would almost certainly have been different if 283 were included in the site in the first place.

^D Document A37 – the illustration at p.17.

Relationship with the Conservation Area

- 8.32 The height and massing of the pavilions on Church Street and the western boundary of the site would not properly respect the character and appearance of the Conservation Area.
- 8.33 The northern building (Building C^A) would be seen in conjunction with the existing 149-151 Church Street^B in views eastwards along Church Street, including the local view identified in the Conservation Area Audit.^C Because of the length of the frontage of the northern pavilion and its much greater height,^D it would provide an unacceptable setting for the conservation area and have an unfortunate relationship with 149-151. It certainly would not constitute the highest quality of urban design in terms of its relationship with the conservation area. Even if it were considered appropriate for part of the return along Church Street to be the height proposed, it must be possible for development to step down in order to relate better to the buildings in the conservation area.
- 8.34 The proposed pavilions along the western boundary of the site (behind the Paddington Green buildings) clearly have an unacceptable relationship with the existing and consented development immediately on the other side of that boundary and within the conservation area. There is also a serious rights of light problem^E and the acceptability of the proposal appears to rely on agreement with the owners of the adjacent site to move development back from the boundary. This is an area of the proposal which also concerned CABE.^F If the acceptability of part of the proposal is dependant on additional development taking place off-site which has not been secured, then the proposal should be refused.
- 8.35 The overbearing nature of the development along this boundary would also be perceived from Paddington Green. The cross sectional material available^G shows that the pavilions would be seen over parts of the frontage buildings from most parts of the green. It would be clear to the eye just how close those pavilions were behind the existing buildings and also that they ran the whole length of the conservation area boundary.
- 8.36 It is, of course, not necessary for the development to be of the same height and massing as the conservation area buildings or to be hidden from view from the green. However, the unvaried mass of the pavilions around the northern and western boundaries of the site would not provide the respect for the character and appearance of the conservation area required by the highest quality of urban design. The Sainsbury's scheme illustrates one way in which the massing could be broken up along those boundaries to provide a more appropriate relationship with the conservation area.
- 8.37 That part of the proposals which would actually face on to Paddington Green would not provide a sufficiently strong 'bookend' termination for the terrace; nor would it adequately reflect the variation in height and building line found in the group. The Sainsbury's proposal illustrates one way in which this could be achieved.

^A Document A36 - see p.4.

^B Document CD43 identified at p.19 as unlisted buildings of merit.

^C Document CD43 - figure 10, opposite p.23.

^D Document E16 (responded to by the appellant with Document A42) - the building would be perceived as roughly twice as tall.

^E Admitted by Mr Squires in cross-examination by Mr Hicks (Mr Elvin responded that there is direct authority from the High Court that the existence of rights of lights issues is, as a matter of law, irrelevant).

^F Document A5 Appendix 3.

^G Documents CD12 and E17.

- 8.38 In short, the design of the development in relation to the conservation area and the south west boundary of the site does not achieve the highest standard of urban design and the appeals should be dismissed for that reason.

Permeability

- 8.39 Permeability is an important issue for this site. It is important that the redevelopment is designed so as to enable and encourage people to move into and through the site rather than simply around it. It is also an issue which CABE thinks important and which it has raised in relation to both schemes.^A
- 8.40 The appeal proposals do not provide a good, or even acceptable, level of permeability. Newcastle Place, flanked as it is by the high security police station is never going to be an attractive route for pedestrians. In any event, it could provide only limited permeability, because it goes round rather than through the site. The proposed route between Newcastle Place and Church Street is no more than an alley, completely overshadowed by the western pavilions. It would not attract people into or through the development.
- 8.41 The design of the appeal proposals, with their rigid adherence to pavilions of equal height, makes it difficult to achieve permeability. The work done on the Sainsbury's scheme shows that permeability can, in principle, be achieved with appropriate design. Achieving permeability is an important element of good urban design in relation to this site. The appeal proposals should be refused because they do not provide it.

Other design points

- 8.42 The Edgware road frontage of the proposals needs to be broken up more and vertical emphasis added; and the north-east corner should provide a better signpost and link between the Church Street market and the proposed superstore. The Sainsbury's scheme illustrates one way in which this could be done, through the use of towers.
- 8.43 The Sainsbury's scheme illustrates that a different design approach could provide better daylighting conditions for residents in the area than the proposed schemes, while still providing the same amount of new residential accommodation.^B In the circumstances, the impact of the appeal proposals on daylight should not be permitted.

Conclusion on planning merits

- 8.44 The appeal proposals should be refused for the transportation and design reasons set out above. Each of the main heads above would independently justify dismissal; collectively, they provide an overwhelming case.

Fallback

- 8.45 Little weight should be attached to the resolution to grant planning permission in relation to Option C in the absence of a planning permission that has survived challenge.
- 8.46 The resolution to grant was made in April 2004 without any clear understanding of the highway issues and apparently on the mistaken understanding that a resolution to grant

^A Documents A5 (Appendix 3) and E11.

^B A considerable quantity of evidence on daylighting was produced for the inquiry - Documents E/PJL/1-3 for Sainsbury's and A10-12 for the appellant. Discussions outside the inquiry between the respective witnesses culminated in an agreed statement, Document E7, supported by drawings E7.1 and E7.2 from Sainsbury's and responded to with Document A34 from the appellant. Document A33, submitted by the appellant, is a BRE report on the Sainsbury's scheme. There was no objection from WCC on daylight or sunlight issues.

- would avoid the need for an appeal. It is now clear that the appellant always intended to pursue these appeals in any event – and there has been no visible progress on the section 106 obligation relating to Option C in the last five months.^A
- 8.47 To comply with the resolution the obligation would have to differ significantly from those being made in connection with Options A and B, in relation to both road widening and community payments. Indeed, it seemed to be accepted by Mr Lotbiniere that the matter would have to go back to committee. If so, it seems inconceivable, given the extensive additional information now available, that the Committee should not be given an opportunity to review the merits of the proposal.
- 8.48 It is accepted by the appellant that a start on Option C would be unlikely before a decision on these appeals is made – because, if it is permitted, they will want to build the more valuable scheme before this inquiry. In the circumstances, and particularly in the light of the extensive new information on transportation, it would be quite wrong for a permission to be issued on Option C in advance of the decision on these appeals.
- 8.49 If such permission is issued, it is likely to be challenged in the Courts. Sainsbury's has already given an indication of the likely grounds of challenge in the absence of any reconsideration.^B Even if there were a reconsideration, however, Sainsbury's believes it would be very difficult for the Council reasonably to determine the transportation issue in advance of decisions on these appeals, given its position that it has not formed its own opinion but simply made the assumption that TfL is correct.
- 8.50 Even if there were an unchallengeable permission for Option C, Sainsbury's does not believe that that should alter the decision on these appeals. If, in the absence of a permission for Option C, the appeals on Options A and B would be dismissed on transportation grounds, then the existence of a permission should cause no change – because Options A and B both have a building line that would inhibit full widening. If, in the absence of a permission for Option C, the decision would be to dismiss the appeals on design grounds, then the existence of a permission should make no difference – because Option C may not be implemented.^C
- 8.51 Despite the time spent on the question of ransom, the appellant accepts that these appeals should be decided on their ordinary planning merits, and that the financial positions of particular parties should not affect the decisions.^D Financial considerations can, as a matter of law, be material – but only if they relate to a planning consideration. A purely commercial consideration, such as the desire of an appellant not to pay more than a certain amount to acquire a property, is not in itself a material consideration. Such a matter is normally only material where there is a viability issue, or a proper argument for enabling development. This is not such a case, nor an exceptional case of personal hardship, nor a case where there is a material planning consideration arising from financial considerations.

^A Both Mr Elvin for the appellant and Mr Phillpot for WCC stated that there had been significant progress. An undertaking had been given that Sainsbury's would have the opportunity to comment on the provisions of the obligation but that had not yet happened; hence Mr Hicks' use of the phrase 'visible progress'.

^B Document E15.

^C For example, because the rights of light problem on the western boundary cannot be sorted out, or (if a taller tower is in principle acceptable) because the appellant wants to get the greater value and is prepared to make design changes to achieve that.

^D Accepted by Mr de Lotbiniere in cross-examination by Mr Hicks.

8.52 The appellant has chosen to pursue the argument that 283 is not necessary to the appeal proposals - with the objective of achieving a greater profit. If the planning argument is wrong, the appellant will have to do a deal to include 283. There is no evidence to support any argument that that would not happen promptly. Both the appellant and Sainsbury's are keen to get on with it and Mr Dean, previously an unpredictable factor, no longer has to be dealt with.

Overall conclusion

8.53 There are sound transportation and design reasons for dismissing these appeals and there are no other material considerations that outweigh those reasons.

9. THE CASE FOR WEST END GREEN (PROPERTIES) LIMITED

I give here the gist of the case for West End Green (Properties) Limited. I have adopted the structure and content of the closing submissions, amplified where appropriate by reference to opening submissions, proofs of evidence and what was said at the inquiry itself. Accompanying this report are the opening and closing submissions made on behalf of West End Green and all proofs of evidence and other documents produced for the inquiry by its witnesses. They are listed in Annex B.

Introduction

- 9.1 The appeal site is identified in both the UDP and the emerging Replacement UDP as a Major Development Site for mixed use development.^A Part of the site lies within the Paddington Green Conservation Area.^B The Edgware Road frontage of the site is shown in the emerging UDP as a Core Shopping Frontage falling within the Church Street / Edgware Road District Centre.^C An area to the front of the site is the subject of a safeguarding direction for future road widening.^D
- 9.2 There are three relevant development proposals – Options A, B and C. Options A and B are the subject of the appeals.^E Option C enjoys a resolution to grant planning permission subject to completion of a satisfactory section 106 obligation.^F
- 9.3 The planning history of the site is long and complex.^G It shows a number of matters:
- the principle of a mixed-use scheme to regenerate the site has been supported in principle by Westminster City Council (WCC) for fifteen years and more recently by the Greater London Authority (GLA);
 - many variations for the development of the site have been considered over the last fifteen years but none has shown any signs of achieving actual development and regeneration until the appearance of West End Green (Properties) Limited, which has pursued obtaining permission with determination;
 - development of the site excluding 283 Edgware Road is considered acceptable;
 - delays in the process, because members have sought to achieve certain matters notwithstanding officer recommendations, have held up the grant of permission and have threatened to blight the regeneration of the site.
- 9.4 With regard to West End Green's proposals:
- WCC officers have consistently supported recent proposals by West End Green for the redevelopment of the site;
 - WCC has resolved on a number of occasions to grant planning permission for the range of land uses now sought in the appeals before the inquiry;

^A Document CD69 – Schedule II, ref. M8 (p.334);

Document CD35 – Schedule 1, ref. R25 (p.604).

^B Document G6.1 – this drawing shows the conservation area as it affects the appeal site and buildings within it.

^C Document CD35 – the centre is defined on p.305, at 7.6, and shown on Map 7.6

^D Document CD69 – Policy TRANS 3(B), p.181, and shown on Map 20;

Document CD35 – Policy TRANS 18, p.231, and shown on Map 4.7; modified as in Document CD37, p.167.

^E Documents G6 and G7 – described in Section 3 above.

^F Document A60 – described briefly in Section 4 above.

^G Described in Section 5 above – also in Documents A1 and A16.

- the Mayor of London supports the principle of a tower but prefers the higher tower of Option B on the grounds that it provides a better design and provides more residential (including affordable) accommodation;
- the fundamental design parameters of Options A and B (subject to the heights of the tower and building E2) are agreed to be appropriate by WCC and the Mayor;
- no objection was raised by either WCC officers or members in either January 2003 or in August 2003 to development not being set back to the safeguarding line;
- officers supported the community and environmental benefits package of £546,000 offered by West End Green when reporting to the October 2003 meeting; the decision to require an additional £250,000 was made by the Planning Committee without any detailed explanation.

9.5 The issues that arise between the appellant, WCC and TfL are as follows.

9.6 On both Option A and Option B:

- whether the proposals should be refused planning permission because they are not set back to the safeguarding line set out in the UDP;
- whether a package of community and environmental benefits amounting to £750,000 is appropriately required having regard to Circular 1/97.

9.7 On Option B only:

- whether the height of the proposed tower gives rise to an unacceptable impact upon the area around the site, the adjoining Paddington Green Conservation Area or views from the Royal Parks;
- whether the height and bulk of Building E2 are unacceptable.

9.8 Sainsbury's Supermarkets Limited argues that Options A and B should be refused for additional reasons, including the design of the proposals overall. On road widening, its objection takes a different form to TfL's. It also raises the issue of the effect of loss of daylight on residential amenity.

9.9 Nonetheless, it remains common ground between all the main parties to the inquiry that:

- the site has been derelict for many years, is in urgent need of regeneration and Options A and B are both capable of achieving that regeneration;
- the proposed mix of uses is appropriate for the site in the context of the UDP, the emerging Replacement UDP and national policy;
- the proposed level of affordable housing is appropriate;
- a tower block of at least 22 storeys on the southern part of the site is appropriate;
- the site is in a highly sustainable location having regard to access to the underground, bus services, cycling facilities and Paddington Station; it enjoys the highest possible PTAL score of 6;^A
- TfL's suggestion for the possible widening of Edgware Road is at the earliest stage and the options remain to be fully considered and consulted upon; the outcome of such a suggestion is both uncertain and likely to take years before it is known.^B

^A Document A7 at para. 5.9, agreed by Mr Richards in cross-examination. Mr Foot referred to a PTAL score of 5 but agreed there that was little difference between himself and Mr Lewin.

^B Accepted by Mr Richards in cross-examination, when he said it would probably take eighteen months even to publish a scheme.

9.10 The following matters may also be noted as this stage (including matters of common ground^A between the appellant, WCC and the Mayor, though not necessarily Sainsbury's):

- The proposals (with the exception of Building E2 in Option B (which can be adjusted by condition if necessary) are appropriate to the nearby Paddington Green Conservation Area and the settings of nearby listed buildings.
- The designs of Options A and B are both appropriate and of a high quality,^B were adjusted to reflect CABE advice^C and are the result of a lengthy period of gestation and refinement.
- WCC officers have consistently supported recent proposals by West End Green for the redevelopment of the site.
- WCC considers that Option C, which shares many of the key features of Options A and B, should be granted planning permission;^D it has resolved to that effect, although the negotiation of the planning obligation has delayed the issue of the permission.
- The emergence of the issue of the safeguarding line, apparently on the initiative of the Mayor himself, was not prompted by highways advice,^E only appeared in late December 2003 and lacked any support from technical highways advice until the draft CBP Report of March 2004.^F The objection was therefore a policy/political one. The Mayor did not have evidence upon which to base his assertion that he would have directed refusal until some months after he had done so. The considerable reluctance of TfL in correspondence, and Mr Richards in evidence, to disclose the true position, together with the surprising lack of transparency by TfL, the GLA and the Mayor,^G raises severe doubts concerning the appropriateness and validity of the objection as well as the propriety of the procedures involved.
- It is not necessary for Options A or B themselves to enable full Edgware Road widening, the need for which (if established in due course) arises for many reasons other than the development of the Site. It is acceptable for certain aspects of the appeals schemes to be mitigated as part of the package of TfL proposals for the Edgware Road that eventually emerges.^H
- The appellant's 6-lane scheme uses existing lane widths and thus does not require the considerable land take which the illustrative CBP proposal suggests would be needed.

The relevance of Option C

9.11 The appeal proposals do not exist in isolation. Option C, closely resembling Option A but adjusted to meet the requirements of TfL with regard to future road widening, is subject to a resolution to grant planning permission.

9.12 Sainsbury's argues that the decision is legally flawed.^I Its reasons are principally that members did not have before them the highways material in the form of the CBP Report,^A

^A Documents A49 and A50 are the Statements of Common Ground on planning and transportation matters.

^B Document B3 – Mr Clegg's evidence at paras. 8.1 and 8.4.

^C Document A5 – Appendix 3 is CABE's letter; the matter was addressed by Mr Squire in cross-examination by Mr Phillipot and in re-examination.

^D Document CD30.

^E Explained by Mr Richards in response to cross-examination questions by Mr Elvin.

^F Document D9 – the issue was not raised by CBP in its report of 16.12.03 (Document D8).

^G West End Green was not provided with a copy of the October 2003 SBA report (Document E22) criticising its proposals in respect of which CBP advised the Mayor on 16.12.03. Neither of the draft CBP reports nor the SBA report sent to TfL was disclosed to the appellant until mid-inquiry.

^H Accepted by Mr Richards during cross-examination.

^I Document E15.

that the draft planning obligation does not meet what Sainsbury's argues is required, that WCC wrongly took account of the ransom position with respect to 283 and that it did not consider the benefit of alternative schemes.

9.13 The appellant does not accept that the decision was flawed. Even so, since it is possible that the matter will be put back to members for reconsideration, such flaws as may exist can be overcome. It might be said by Sainsbury's that it is unclear what views members might then form, but this would be to ignore:

- the history of failed regeneration of the site;
- the fact that Option C (regardless of the appellant's case at the inquiry) safeguards land which may be required for full road widening in a form acceptable to TfL (which does not accept Sainsbury's views on the issue - TfL considers that full road widening has to be addressed through a future process which remains to be carried out and that the development of the site is not the reason for seeking full road widening);
- the absence of other issues between WCC, TfL and the appellant once the line for future road widening is protected;
- the good reasons that exist for excluding 283, given the acceptability of West End Green's designs to WCC officers, CABE and the Mayor;
- that the ransom position of 283 has been clarified during the inquiry, it now appearing clear, contrary to the impression Sainsbury's seemed to generate with members, that it has no intention of offering 283 free of charge, or even on reasonable market terms;^B members are entitled to conclude, in the light of good designs retaining 283, that 283 is not required and that its acquisition is likely to delay or prevent the needed regeneration of the site;^C
- that the existence of alternatives is not a reason for refusing an application if the proposal is satisfactory on its own merits; and that the alternative put forward by Sainsbury's is both highly unsatisfactory, as CABE has pointed out, and not even in a final form which could go before members for proper consideration and/or decision.

9.14 Concerns^D with regard to the differences in the arguments presented against the necessity of some of the planning obligations sought for Options A and B and those accepted for Option C are easily dealt with. The appellant accepts that the obligations on Option C are lawful and have sufficient connection with the development, even though not all may be necessary in terms of Circular 1/97.^E It is not unusual for a developer to accept the imposition of an obligation on the grant of permission which, if he were forced to take the application to inquiry, might be considered unnecessary under Circular 1/97. Even on Options A and B, the appellant has accepted some obligations which are not strictly necessary in the terms of the circular, such as a contribution to the public art aspirations of the UDP.

^A Document CD55.

^B See Documents CD15 and A32. In CD15, p.9, it is stated that Sainsbury's is willing to 'hand over the freehold ... for free'. In A32, p.50, the letter says 'transfer the freehold ... at no cost' but continues that this 'represents a substantial premium'; at p.55C is reference to the offer 'to transfer the property ... at no cost in conjunction with a market rent for the store'; the letter at pp.56/57 notes that Sainsbury's has been willing to 'hand over, for free, the freehold ... as part of the deal'. Similar phrases in other pages in A32 were raised in cross-examination of Mr Forster.

^C A principle accepted by Mr Forster in cross-examination.

^D Raised during cross-examination of Mr de Lotbiniere by Mr Hicks.

^E The tests for legality and policy acceptability are not the same: see Documents A58 and A59.

9.15 The appellant does not submit that Option C provides a formal 'fallback position' in the recognised sense, given that there is no permission which can be implemented if the appeals fail (although there may be one by the time decisions are issued). Nonetheless, WCC's support for Option C, which has been maintained during the inquiry, does provide an important material consideration in determining the appeals. Significant weight can be attached to the fact that Option C is supported by WCC and likely to be granted planning permission in any event. That provides a baseline against which a number of the issues can be tested, especially the design, visual and daylighting issues raised by Sainsbury's.

The safeguarding line

9.16 It is an issue common to both Options A and B whether they should be refused planning permission because they do not respect the safeguarding line identified by Policy TRANS 3 and Map 20 in the UDP, Policy TRANS 18 and Map 4.7 in the emerging UDP.

9.17 Policy TRANS 18 was the subject of objection at the UDP inquiry by a number of parties, including the GLA and Mr Dean (the owner of 283 Edgware Road). TfL objected to the safeguarding line on the basis that a widening scheme was no longer proposed in its work programme. The Inspector concluded that the safeguarding line was justified because 'the LPA quite properly wish to indicate the extent of land needed for purely local road improvement ...'. Thus, the justification for the safeguarding line was that 6-lane road widening would be necessary between Newcastle Place and Church Street as a result of development of the appeal site.

9.18 However, that position has altered since the UDP Inspector considered the matter. The appellant's evidence is that the partial widening proposal associated with Options A and B would be sufficient to accommodate the traffic attracted to each development.^A All the public authorities who are parties to the inquiry agree that the widening of Edgware Road between Newcastle Place and Church Street is not justified by a need for purely local improvement as a result of the development of the appeal site.

9.19 The evidence is that the network accommodated significantly more traffic prior to congestion charging than it does presently.^B It is accepted^C that the increase in traffic associated with the development proposals would not exceed the levels accommodated by the network prior to the introduction of the congestion charge.

9.20 In any event, Option C brings with it a virtually identical partial widening scheme to that proposed in association in Options A and B. WCC has resolved to grant planning permission for that scheme subject to execution of a section 106 obligation. WCC accepts that the developments with partial widening would not give rise to unacceptable impacts upon traffic on the local highway network.^D WCC does not contend that the proposed developments with partial widening would have an adverse impact upon traffic on the local highway network. It accepts, therefore, that a scheme that respects the safeguarding line in the UDP is not necessary in order to mitigate the direct traffic impact of Options A or B.^E TfL adopts the same position and accepts that its grounds for supporting the safeguarding line were concerned with emerging, but as yet undefined, wider aspirations for the Edgware Road.^F

^A Document A7 – p.11, para. 3.16; Mr Low, Mr Mogridge and Mr Richards all agreed.

^B Document A30 – para. 12.

^C By both Mr Mogridge and Mr Foot in cross-examination.

^D Confirmed by Mr Low in cross-examination.

^E Confirmed by Mr Low in cross-examination.

^F Confirmed by Mr Richards in cross-examination.

9.21 In short, the safeguarding line in TRANS 18 was designed to ensure that development of the appeal site would not cause local highway traffic problems – but the evidence is that, even though they do not respect the safeguarding line, Options A and B would not cause such problems. Consequently, there is no conflict between TRANS 18, the safeguarding line and Options A and B^A. The weight of any identified conflict with TRANS18 is thus significantly reduced because the developments do not conflict with the rationale behind TRANS 18. Options A and B both accord with the policy objective.

Bus journey times

9.22 The real issue has been whether, because Options A and B do not respect the UDP safeguarding line, delays in bus journey times would result to the extent that planning permission should be refused. TfL and WCC argue that the safeguarding line should be respected in order to allow for widening of the Edgware Road to occur at some time in the future as part of a wider scheme which would bring benefits to buses.

9.23 In order to identify the extent to which the proposals would affect bus journey times, the parties have developed computer models and examined the journey time outputs that the models produced. The scenarios examined were:

- the baseline case;
- the partial widening proposed in Options A and B;
- 6-lane widening from Newcastle Place to Church Street;
- 6-lane widening from Newcastle Place to Maida Avenue, and
- 6-lane widening from Newcastle Place to St Johns Wood Road.

The traffic models

9.24 In carrying out this modelling, it is obviously important that that the model used is sufficiently reliable to be able to draw reasonable conclusions from it. TfL and the appellant both used the TRANSYT model as the basis of their work, albeit that there were differences between them in the details of how they used the model. Indeed, since TRANSYT is the model used by TfL for London's strategic road network, it is obvious that it should be a major factor in examining the issues in the present appeals.^B

9.25 The Sainsbury's case has shifted quite considerably. It began in October 2003 with a report by Savell Bird & Axon (SBA), not disclosed to West End Green until the inquiry but provided to TfL and the Mayor, which concluded that 'the PARAMICS modelling provides a better comparison of the schemes due to its ability to model the interaction between vehicles and queuing associated with nearby junctions ... We are of the opinion that, in this case, TRANSYT is not as accurate as the PARAMICS modelling ...'.^C This theme was re-iterated in the evidence submitted prior to the inquiry.^D The point being made was clear: TRANSYT was a wholly inappropriate tool while the PARAMICS model was an appropriate one^E and would overcome the concerns with TRANSYT.

9.26 SBA continued working on the PARAMICS model and produced new material at the beginning of the inquiry. By then, SBA had been working on its PARAMICS model since

^A Accepted by both Mr Richards and Mr Low in cross-examination.

^B Mr Foot eventually accepted in cross-examination that TRANSYT was the model of choice for these schemes.

^C Document E22 – p.8, para 4.21.

^D Document E/JF/1 – Mr Foot expressed the view that he thought TRANSYT 'overestimates the performance of the network' and 'to overcome this concern, I have used micro-simulation'.

^E The point made by Mr Foot in cross-examination.

before October 2003, as the Report to TfL^A amply demonstrates. The final version of the model put before the inquiry^B represents the concerted efforts of SBA over many months.

9.27 In the appellant's opinion, PARAMICS is not an appropriate model to use to investigate the impact of development upon bus journey times in an urban area. TfL has produced a Guidance Note on micro-simulation^C which states, amongst other things, that PARAMICS does not yet have the ability to optimise traffic signal settings. This case concerns a stretch of the Edgware Road where the signal timings are constantly being optimised by SCOOT and PROMPT.^D PARAMICS cannot reflect this.^E Accordingly, it is not, even in principle, an appropriate model to use for a heavily signalised road such as the Edgware Road. Indeed, the TfL Guidance Note explains that it will continue to use TRANSYT when looking at signal optimisation. TRANSYT is therefore the TfL model of choice for analysing the performance of the Edgware Road.

9.28 Mr Lewin's rebuttal proof of evidence sets out a number of apparent defects in the PARAMICS modelling.^F It caused Mr Foot to alter his position when he gave evidence. He no longer contended that TRANSYT was inappropriate and that PARAMICS should be used instead. Instead, he sought to justify PARAMICS 'as an additional tool'.^G

PARAMICS

9.29 If there are errors of significance in the PARAMICS modelling, it cannot be relied upon to derive bus journey times. This is because the nature of the model is such that an error will have other consequential effects and the operator cannot disentangle the extent to which those effects might affect bus journey times.^H There are seven significant errors in the SBA modelling. Each is sufficient in isolation to make the PARAMICS model unreliable; together, they render it so fundamentally flawed that its output cannot be relied upon at all – not even 'as an additional tool'.

- The baseline scenario does not reproduce the base flows (it varies between 63% and 91% of observed flows) but that error is not repeated in the partial widening scenario. The model therefore exaggerates delays to buses.
- In the partial widening scenario, the original PARAMICS model incorrectly modelled the narrowing of the carriageway outside 283 Edgware Road. The second model corrected this only graphically. It could not accept two lanes of traffic through this pinch point, or even 'close staggering'.
- The design speed in the amended model was reduced to a constant 10mph (16kph), applying even if the road was clear, and thus did not reflect reality.
- In the partial widening scenario, a significant proportion of north-bound traffic swerves to the left after the pinch-point at 283 only to move back into the right-hand lane after

^A Document E22.

^B Document E23.

^C Document D7 – p.5, 3rd bullet point.

^D SCOOT (Split Cycle Offset Optimisation Technique) is an urban traffic control (UTC) programme which works constantly to assess traffic conditions and optimise the performance of a set of linked signals in order to reduce or spread congestion; PROMPT is a bus priority system which identifies the presence of buses and enables SCOOT to minimise delays to their passage (see Document CD55.1, paras. 2.8.2 and 2.8.4).

^E Agreed by Mr Foot in cross-examination.

^F Document A25.

^G In examination in chief.

^H Accepted by Mr Foot in cross-examination.

the Church Street traffic lights^A – introducing counter-intuitive driver behaviour and dramatically increasing bus journey times in that particular scenario.

- The pinch point keyed into the model at 283 is much tighter than the reality, making it harder for vehicles to get through.
- The north-bound nearside lane at the Church Street junction is coded as 'straight ahead only' despite the fact that some assigned traffic will turn left. Also, the south-bound offside lane is coded as 'straight ahead and right turn' when it should be 'right turn only'. Both would cause delays in the model that would not occur in reality.
- It is a feature of existing conditions on the Edgware Road that use of the bus lanes for other purposes (legal and illegal) occurs.^B Monies would be provided as part of the development proposals to assist in the introduction of enforcement measures. Thus, PARAMICS should have modelled additional delays in the base case to reflect existing illegal use of the bus lane and the reduction or removal of those delays in the partial widening scenario to reflect the introduction of enforcement measures.

9.30 The effect of all of these flaws is that PARAMICS has failed to model the reality. The difference in bus journey times between the base case and the partial widening case has been exaggerated. Thus, the claimed benefits of a full widening scheme compared to a partial widening scheme, as derived from PARAMICS, cannot be relied upon in any way. Indeed, CBP describes these claimed benefits as 'disingenuous'.^C

9.31 This conclusion can be verified by examining the PARAMICS model results. In the morning peak, Options A and B are forecast to add approximately one vehicle every seven minutes to Edgware Road north-bound, which is generally free-flowing at that time of day – but the PARAMICS model suggests that every bus would be delayed by some 141 seconds. In the evening peak, Options A and B are forecast to add roughly one vehicle every minute between Harrow Road and Church Street – but the PARAMICS model suggests that all buses would be delayed by some 48 seconds.

9.32 After the introduction of congestion charging, traffic flows on the Edgware Road reduced by about 180 vehicles in the morning peak and 130 vehicles in the evening peak. Before the introduction of congesting charging, northbound bus running times were 19 seconds higher in the morning peak and 34 seconds higher in the evening peak over the route from Marble Arch to St John's Wood Road. Thus, an additional 180 vehicles in the morning peak could be expected to introduce a 19-second delay and an additional 130 vehicles in the evening peak a 34-second delay. This is to be compared with increases of 9 and 54 vehicles in the morning and evening peaks with the development and PARAMICS' forecast delays of 141 seconds and 48 seconds respectively.^D The PARAMICS results are completely counter-intuitive.^E

9.33 The additional traffic from the development is well within the level of fluctuation that SCOOT can accommodate – and, indeed, did accommodate before introduction of the congestion charge.

^A This flaw was noted by CBP in December 2003 (Document D9) – it said that this could lead to false conclusions being drawn from the model.

^B Document D5 – p.35, para. 6.1.3. See also Document A25 – p.10, para. 35.

^C Document D8 – p.17, para. 11.1.2.

^D Document A30 – paras. 12-13.

^E Document A25 – p.7, paras. 26-28 – not challenged in cross-examination of Mr Lewin while Mr Foot accepted in cross-examination that the morning peak delays would not happen.

9.34 Accordingly, it is obvious that the PARAMICS modelling cannot be relied upon in order to draw any meaningful conclusions. It should be entirely rejected.

TRANSYT

9.35 The TRANSYT model was used by CBP for TfL and Symonds for the appellant. WCC and SBA for Sainsbury's sought to suggest that TRANSYT could be criticised because it did not take into account additional traffic that would arise if the proposed extension to the congestion charging zone comes forward and from traffic associated with the Heathrow Express terminus at Paddington Station once Terminal 5 at Heath Row has opened.

9.36 No detailed evidence was produced to substantiate the view that additional traffic would arise on the Edgware Road if the mooted extension to the congestion charging zone were to come forward. No modelling work was conducted to establish that there would be an increase in traffic. Even if there were such an increase, there was no evidence to establish that full widening between Newcastle Place and Church Street would then be necessary, with or without the proposed developments in place. TfL, however, has adopted a public position on the matter. It does not believe that traffic flows would change significantly within the vicinity of the development site.^A

9.37 Of course, whether or not an extension to the charging zone will come forward, and the precise nature of such a scheme, remain uncertain. In any event, Edgware Road marks the western boundary of the existing charging zone and the proposed extension would retain it as a free route through the zone – so it is only if traffic were diverted from other routes on to Edgware Road that any increase in traffic flows could be expected. North-south routes to the east of Edgware Road already terminate at the boundary of the charging zone and any traffic wishing to avoid the zone will already be diverting onto Edgware Road (and is included in the base case). There are few north-south routes to the west of Edgware Road and they are some distance from it; it is unlikely that traffic currently using those routes would travel so far to the east to use Edgware Road.

9.38 There is thus no basis for accepting that an extension to the congestion charging zone is likely to have any material effect on flows on the Edgware Road between Newcastle Place and Church Street. Any assertion that 6-lane widening would be required on this stretch as a result of an extension to the congestion charging zone should be rejected.

9.39 The simple assertion that additional traffic would arise on Edgware Road as a result of passengers arriving at Paddington on the Heathrow Express from Heath Row Terminal 5 was not supported by any evidence. There is no modelling work to establish that there would be an increase. Even if there were an increase, there is no evidence to establish that it would require full widening between Newcastle Place and Church Street, with or without the proposed developments. TfL did not include flows from this source in its modelling. There is no basis for accepting that traffic from this source is likely to have any material effect on flows on Edgware Road between Newcastle Place and Church Street. Any assertion that 6-lane widening would be required on this stretch as a result of the opening of Terminal 5 should be rejected.

^A Document CD19.

TRANSYT future cases

Robustness of traffic generation figures

9.40 It is important when looking at the output of TRANSYT to consider the robustness of the inputs. For TfL, CBP used traffic generation figures that were very robust indeed, for the following reasons.

- The trip rates utilised are from the Camden Sainsbury's as reported in TRICS in 1991, notwithstanding major changes in shopping hours since then and much lower trip rates recorded more recently at the Ladbroke Grove Sainsbury's. For a store of 5,300sqm the overestimate could be as much as 108 in-bound and 63 out-bound trips in the evening peak.^A
- The assumption that 60% of trips to the new foodstore would be new to the network is too robust given that customers are likely already to be carrying out their weekly food shop by car and are thus already on the network.
- The store is assumed to be 5,300sqm whereas what is proposed is 4,970sqm, giving an over-estimate of about 15 vehicles in-bound and out-bound in the evening peak on the trip generation rates adopted.
- There is no assumption that the traffic coming to the foodstore would be constrained by the number of parking spaces provided. In examining the right-turn issue, however, it is accepted that the amount of car parking would constrain the volume of traffic.^B
- It is not assumed that vehicles would be parked in the car park prior to store opening, despite the fact that there would be and that that would affect trip generation.^C

9.41 The result of this is that CBP's future cases are likely to over-estimate the amount of traffic to be generated by the proposed developments and as a result will overstate the impact of Options A and B on bus journey times. There are also aspects of how CBP uses the TRANSYT model that would lead to the impact of Options A and B on bus journey times being over-stated.^D In particular, traffic emerging from Church Street into Edgware Road is modelled from a single lane when there is sufficient width for two, constraining the number of vehicles that can emerge from Church Street. Also, the southbound carriageway on Edgware Road at the junction with Church Street is modelled as three lanes. At present, however, vehicles in the off-side lane are blocked by other vehicles queuing to turn right, which means that the model does not reflect an existing constraint that would be ameliorated in the future.

Sainsbury's criticism of the TRANSYT model

9.42 SBA challenges CBP's calibration of the base case modelling. But SBA's average north-bound bus journey time, 181 seconds, comes from a survey conducted during a single hour on a single day.^E It includes time spent at bus stops when the TRANSYT time, 120 seconds, does not.^F A direct comparison cannot be made and there is no proper basis for suggesting that the TRANSYT modelling does not reasonably reflect the existing situation on Edgware Road. The Hyder Consulting Study^G shows that the average time a bus

^A Document D5 - p.17, paras. 4.1.2/3.

^B Document D5 - p.28, para. 5.1.2;
Document CD55.2 - Appendix G

^C Document CD55.2 - Appendix G.

^D Document A7 - pp.35/36, paras. 8.32-34; also the photographs at Figure ML-15 in Document A8.1.

^E Document E4.

^F Document A30 - para. 9.

^G Document CD68.

spends at bus stops along this stretch of road is 49 seconds.^A The true comparison is thus between 181 seconds and 169 seconds, a difference of just 7%. CBP calibrated the model against traffic surveys conducted in November 2003,^B not against the Hyder Survey, thus rendering irrelevant SBA's criticism of the Hyder Survey.^C Capita Symonds' latest TRANSYT runs show baseline northbound bus journey times in the evening peak that are identical to CBP's,^D further confirming the accuracy of the calibration.

- 9.43 SBA also raises concerns about 'blocking back' of junctions. TRANSYT does not examine the extent to which queues at one junction might affect the operation of junctions upstream; that needs to be examined by the operator of the model. TRANSYT shows, for the existing signal timings at Church Street, a maximum queue of 23 vehicles north-bound on Edgware Road in the evening peak.^E Even using CBP's robust modelling approach, blocking back from the Church Street junction would be unlikely to cause problems. The maximum forecast queue is 31 pcus.^F The road would have two lanes in the partial widening case and, in congested conditions, drivers would tend to use both to their full extent. The distance from the Church Street junction back to the Broadley Street pelican crossing is greater than the 80 metres or so of road needed to accommodate 15-16 pcus.^G
- 9.44 All agree that there is a pinch point north of the Church Street junction. Node 103 is introduced there to simulate not a signalised junction but the bottleneck caused by the geometry of the road and other factors to the north of the Church Street junction. The TRANSYT manual explains that 'bottleneck links are treated as junctions with 100% green at which a fixed saturation flow is defined ... delays and stops are calculated for bottleneck links exactly as for other links, except that the flow leaving the link is controlled only by the saturation flow ...'.^H Thus, what is being simulated is the delay caused by a moving queue of traffic, not a queue of stationary traffic. It is not appropriate to look at the queue length output from this node and then to treat it as if it were stopped at a junction in order to see whether it is blocking back to the Church Street junction.
- 9.45 It is also alleged that the TRANSYT modelling is flawed because inappropriate saturation flows have been used. The two limbs to this criticism are that the saturation flows did not match the discharge rates SBA surveyed on site and that it was inappropriate to increase saturation flows in the partial widening scenario to be increased from the baseline case. The first limb is wholly misconceived. The TRANSYT manual explains that 'Saturation flow at a stopline is the maximum rate of discharge from a queue. It can be obtained by measurement or calculation based on stopline width and other site factors ...'.^I SBA's 'observed saturation flows' fluctuate by 103%.^J Observed flow is not the same thing as a saturation flow because observed flow does not necessarily represent the maximum rate of discharge, as the variation in SBA's figures shows. And, of course, these figures represent data from just one hour in a single day.^K If measurement is not and cannot be reliable, it must be preferable to calculate the saturation flows as has been done for TRANSYT.

^A Document A30 - para. 9.

^B Document D5 - p.15, para. 3.5.2, and Table 5.

^C Document E/JF/1 - p.27, para. 7.43.

^D Document A30 - para. 10.

^E Document A25 - p.9, Table 4.

^F Document D5 - Table 7.

^G Assuming c.5m/pcu (the length of a car).

^H Document CD54 - p.11, para. 3.2.6.

^I Document CD54 - p.10, para. 3.2.4.

^J Document E/JF/4 - Appendix D - flows vary from 1671 to 3402

^K Document E4.

9.46 The increase in the saturation flow from 2,900 pcu in the baseline case to 3,600 pcu^A for the partial widening proposal is justified by the differences in the geometry of the Church Street junction between the baseline and partial widening scenarios. It is appropriate to take that into account. The criticisms made of the TRANSYT modelling are not well founded. The modelling is robust and cannot properly be criticised as giving a misleading impression of the likely consequences of development.

The results

9.47 CBP's conclusions are that north-bound buses would experience delay in the region of 70 seconds in the morning and evening peaks but that south-bound buses could enjoy a benefit of just under 20 seconds. The south-bound right-turn stage introduced at the Church Street junction is a particular reason for these additional delays. However, if the attraction of the car park were reduced by limiting the number of car parking spaces to 180, then the need for a right turn stage could be eliminated.^B The north-bound evening peak delay would then be reduced to just 22 seconds.^C Full widening between Newcastle Place and Church Street, assuming a 180-space car park, offers no benefit in north-bound bus running times compared to partial widening.^D This is because, by allowing more traffic across the Church Street junction, greater problems are caused at the bottleneck to the north.^E

9.48 On this basis, no benefits would arise from 6-lane widening between Newcastle Place and Church Street that would not be realised with partial widening.^F Thus, the safeguarding line is not justified on the basis of the need for widening only that stretch of road.

9.49 These conclusions rest on eliminating the need for a right-turn stage into Church Street. But the appellant disagrees that there is a need to reduce the number of parking spaces in order to ensure that no right turn stage is necessary.

9.50 CBP did not model a constrained 223-space scenario. On the unconstrained scenario, some 155 vehicles would turn right in the hour.^G There is an 88-second cycle, 41 cycles an hour. That means 3.8 vehicles per cycle turning right. On the 180-space constrained scenario, 115 vehicles would turn right in the hour^H – 2.8 per cycle. Capita Symonds has modelled a 223-space constrained case. That identifies that some 113 vehicles per hour would make the right turn^I – also 2.8 per cycle.

9.51 The Church Street junction would allow 4 pcus to be contained within the right-turn lane in advance of the stop line such that vehicles would be likely to clear the junction during the intergreen period.^J Even on the unconstrained 223-space case, it is clear that the junction could allow a sufficient number of cars to turn right without the need for an additional right-turn stage.^K

^A Criticised in document E/JF/4 at Appendix A

^B Document D5 – p.30, para. 5.2.2.

^C Document D5 – Table 13 compared with Table 11.

^D Document D5 – Table 13 compared with Table 15.

^E Document D5 – p.34, para. 5.3.7.

^F Document D5 – p.34, para. 5.3.7.

^G Document D5 – Figure 3.

^H Document D5 – Figure 3, bottom right-hand table.

^I Document A8.1 – Figure ML-14.

^J Document D5 – p.31, para. 5.2.2, and accepted by Mr Mogridge in cross-examination.

^K Accepted by Mr Mogridge in cross-examination; supported by Mr Lewin in Document A30, para. 7.

9.52 CBP's modelling is, however, likely to overestimate the number of right turn movements to be accommodated in the peak hours – because of the factors described above^A that make it so robust. Thus, the evidence is that the Church Street junction would be able to cope with the likely number of right turn movements without the need for a specific right-turn stage and without any reduction in the parking numbers. It follows that the need to avoid a right turn stage does not justify a reduction in the parking numbers.

Common sense verification

9.53 It is also possible to examine the likely difference between full widening and partial widening without regard to the modelling. In free flowing conditions, buses would travel at the same speed as general traffic. If traffic were not free flowing, the benefit a bus would gain would depend upon its speed over the limited stretch of bus lane, the time needed for acceleration and deceleration, the speed of vehicles in the general traffic lane and the increase in pedestrian crossing times (crossing a wider road).

9.54 CBP shows that, at an average speed of 20 kph, a bus would gain about 13 seconds.^B At the same time, widening the Broadley Street crossing to provide for the additional lane would cause a 13-second delay, reduced to 8 seconds by weighting to acknowledge that some vehicles would arrive at the end of the stage and would not experience the full delay.^C Thus, the benefit of a bus lane would be about 5 seconds. Of course, in congested conditions, buses would have to merge with general traffic just before the stop line at the Church Street junction and would lose additional time in this manoeuvre.

9.55 Thus, the actual benefit of a bus lane provided by full widening from Newcastle Place to Church Street would likely be less than 5 seconds.^D Modelling verifies this conclusion.

Conclusion on traffic modelling

9.56 Examination of the modelling and the application of common sense demonstrate that partial widening would be unlikely to have any material effect upon bus journey times when compared to full widening from Newcastle Place to Church Street. It is for this reason that TfL and WCC do not contend that full widening from Newcastle Place to Church Street is necessary as a result of Options A or B. Failure to respect the safeguarding line does not affect bus journey times to the extent that planning permission should be refused. Only Sainsbury's sought to argue that refusal was justified. For the reasons set out above, its submissions are flawed and should be rejected.

Prejudice to a wider scheme for Edgware Road

9.57 Instead of seeking to justify the safeguarding line in terms of local highway consequences, the case presented by TfL and WCC rests upon the potential for a more far-reaching scheme of lane widening along Edgware Road. It is argued that, if the safeguarding line is not respected now, implementing Options A or B would prejudice the possibility of such a scheme coming forward in the future.

9.58 TfL objected to emerging Policy TRANS 18 in the full knowledge of redevelopment proposals coming forward for the appeal site on the basis that it had no proposals for widening Edgware Road.^E TfL was concerned about the potentially blighting effect of the

^A In para. 9.40.

^B Document D11.

^C Document D10 – para. 5.

^D Document A30 – para. 26.

^E Low B13 Appx. 6 p 32 para. 6(ii).

safeguarding line and that an unnecessarily rigorous approach would prevent redevelopment of the appeal site.

9.59 In October and November 2003, TfL did not indicate that the safeguarding line needed to be respected in order to allow for a scheme of widening for Edgware Road as a whole.^A On 18 December 2003, CBP completed the modelling work which examined the issues of the level of parking and widening Edgware Road from Newcastle Place to Church Street. That report indicated that, with SCOOT in operation, the likely delays would be between zero and 10 seconds 'resulting in nil detriment'.^B The report did not investigate the implications of full and partial widening for the entire Edgware Road corridor from Harrow Road to St John's Wood Road.

9.60 It was not until 7 January 2004 that the GLA first mentioned a possible connection between Options A and B and the widening of the Edgware Road to six lanes as far as St John's Wood Road. Only after the Mayor gave a policy lead did TfL commission further work.^C In order to accede to the Mayor's desire, TfL has engaged in an *ex post facto* attempt to rationalise a decision to object to Options A and B on the basis that safeguarding is necessary to enable a wider scheme to come forward. It was a decision taken by the Mayor without any evidence to support that view - the first evidence presented to him to support the emergent policy appeared only in March 2004.^D

9.61 The decision to object on the basis of a 6-lane proposal for the wider corridor was taken without any rational, evidential basis for selecting six lanes, as opposed to five or some other arrangement. The modelling work had not been carried out at this point. Even now, the case for six lanes remains to be established.^E

9.62 In short, oral evidence on what amounts to a complete *volte face* from the Mayor, GLA and TfL is completely unsupported by any corroborating documentation.

9.63 PPG1^F advises on the importance of elected members receiving open and impartial professional advice from their planning officers. They are advised to make planning decisions on the basis of a written officers' report. Councillors should have good reasons, based on land use planning grounds, if they choose to resist such advice. The Mayor and TfL adopted their position without any such good reason and, apparently, in the complete absence of supporting documentation.

Prematurity

9.64 The case made by TfL and WCC is akin to an argument that development proposals are premature and will prejudice the preparation of a development plan. In the present case, it is not a development plan that it is argued would be prejudiced but a potential widening scheme for Edgware Road. PPG1 advises on prematurity.^G In a development plan context, prematurity can only arise where the plan has been issued for consultation. In other words, there has to be something actually under consideration in the statutory process that would be prejudiced by a decision to grant planning permission. Here, the

^A See Documents CD16 and CD19.

^B Document D8 - p.7-2, para. 7.1.11

^C How this change in position came about has not been minuted. TfL was unable to produce any documentation on the matter. Mr Richards confirmed in cross-examination that, at a meeting prior to 7/1/04, the Mayor had indicated a desire to 'win back' the time that would be lost for buses.

^D Document D9 - as became clear during cross-examination of Mr. Richards.

^E Mr Richards was unable to point to any documentation that indicated how six lanes had been alighted upon.

^F PPG1, para. 61.

^G PPG1, para. 47 - similar guidance appears in draft PPS1, Annex B, paras. 18-19.

difficulty for TfL and WCC is that no road widening scheme for Edgware Road has been issued for consultation, still less one put forward for decision or compulsory purchase. No proposals are included in either the London Plan or the London Transport Strategy.^A

Conflicts with policy

- 9.65 One major obstacle to a wider scheme coming forward is the Mayor's own policy. Policy 3C.15 in the London Plan^B provides that road schemes need to be assessed against a number of criteria, including that they should not increase the net traffic capacity of the corridor unless it is essential to regeneration. If a scheme would worsen conditions when judged against any of the criteria, then it should not proceed unless benefits in other areas very substantially outweigh the disbenefits and unless unavoidable disbenefits are mitigated.^C The provision of 6-lane widening from Church Street to St John's Wood Road would inevitably create an increase in net traffic capacity – because, by moving buses into a dedicated bus lane, more capacity for general traffic must become available.^D There is a clear conflict with policy in this respect.
- 9.66 Indeed, if the scheme were successful in diverting people on to buses, that too would free up more road capacity for general traffic – which might improve road conditions, thereby causing people to choose to travel by private car once again.^E
- 9.67 In addition, the Transport Strategy for London sets out a number of objectives, including initiatives for tackling social exclusion.^F Policy 3.9 provides that the particular needs of deprived areas are to be taken into account when determining programmes for transport improvements.^G Church Street is such an area.^H By increasing substantially the width of the road corridor, thereby increasing pedestrian crossing times, the likely consequence would be an increase in social exclusion. Also, a significant number of commercial properties would have to be closed to enable the 6-lane scheme to go ahead. That too would be likely adversely to affect the sense of social exclusion that is already experienced by the Church Street community. Nor has the inevitably substantial cost of acquiring that commercial property (and also residential property) been assessed. Nor has the loss of the petrol filling station at 383-393 Edgware Road been addressed.^I
- 9.68 Against all of these matters has to be balanced the advantage to the public interest. A conclusion has to be reached on whether the benefits would result in such 'radical improvements'^J as clearly to outweigh any harm that a scheme might cause. However, the

^A Mr Richards confirmed in cross-examination that there had been no detailed appraisal and that TfL was not near to undertaking consultation. He believed that it would be at least 18 months before TfL was in a position to issue any scheme for consultation. What remains to be done in appraising any scheme that might come forward can be found in Document A40, on the last two pages of Appendix G.

^B Document CD32 – p.120.

^C Mr. Richards confirmed in cross-examination that no assessment of any scheme had been made against the criteria in Policy 3C.15. He accepted that a compelling case in the public interest would have to be shown if any disbenefits of the wider scheme were identified, a test akin to that employed in obtaining a CPO. He confirmed that what the Mayor is looking for are 'radical improvements'.

^D Mr. Richards, in cross-examination, sought to suggest that perhaps options other than 6-lane widening might come forward. However, none has been modelled and no data presented to establish what the benefits to bus journey times might be from such other options.

^E Mr. Low confirmed in cross-examination that, as far as he was aware, these matters had not been examined.

^F Document CD33 – p.61.

^G Document CD33 – p.83, Policy 3.9.

^H Agreed by Mr Richards in cross-examination.

^I Document CD35 – emerging Policy TRANS 17 protects petrol filling stations – including, specifically, the one at 383-393 Edgware Road.

^J See footnote C above.

advantages are not so significant. In the 180-space scenario, in the evening peak, the difference between full widening to St Johns Wood Road and partial widening is about 180 seconds.^A A scheme to Maida Avenue provides a benefit of 100 seconds.^B Such small journey savings could not be described as amounting to 'radical improvements' over this length of road.

9.69 That is particularly so when the potential gains that could arise from better enforcement of the existing bus lanes are taken into account. Infringement of traffic regulations relating to bus stops, bus routes protected by red lines and bus lanes occurs frequently and causes difficulties for bus operation and reliability.^C The effect of removing such difficulties in the north-bound direction on Edgware Road is a saving of some 180 seconds.^D In other words, the benefit realised by 6-lane widening to St John's Wood Road could be realised by improving enforcement measures without any need to acquire homes or businesses, without increasing the severance effect for the local community and without increasing the net capacity of the road corridor. The section 106 obligations provide funds to enable better enforcement of the existing bus lanes as part of the development.

9.70 Taking all these matters into account, the possibility of a 6-lane widening scheme coming forward must be remote. It is difficult to see that such a scheme would be likely to pass any kind of cost-benefit analysis.

6-lane widening with Options A and B

9.71 If a 6-lane scheme were to come forward, it could be provided even with the proposed building line for Options A and B. Criticism of the lane widths that would be possible is ill-founded.^E TfL, when examining options to the north, would look to reducing the width of the road or lanes to less than what might ideally be sought.^F If widths can be reduced to avoid land take to the north, then it seems entirely inconsistent not to permit a similar reduction in width to avoid land take to the south, between Newcastle Place and Church Street. TfL appears to argue that standards should be applied strictly in relation to the appeal site frontage but not elsewhere.

9.72 The difference in journey times between the Option A and B proposals and TfL's 6-lane scheme has been identified as an improvement of 3-5 seconds.^G The reduction occurs because of the reduced pedestrian crossing distances and clearance times.

Conclusion on future Edgware Road widening

9.73 The 6-lane scheme which has emerged so recently from TfL does not have any formal policy, consultation or funding support. It is no more than an *ad hoc* response to Options A and B (and a late one at that). There appears to be little likelihood of a scheme on the line contended for by TfL proceeding in the reasonably foreseeable future. Indeed, the likely costs, the need for compulsory purchase, the impact on the character of the area, on the environment and on those who live in and use this part of the Edgware Road, all make it unlikely that it will proceed. It does not provide a sound basis for TfL's change of

^A Document D5 - Table 18.

^B Document D5 - Table 20.

^C Document D5 - p.14, para. 3.4.6.

^D Document D5 - p.35, para. 6.1.3.

^E Document A30 - paras. 27-41 respond to the criticisms in the safety audit at Appendix G in Document E/JF/2.

^F Conceded by Mr Richards in cross-examination.

^G Document A7 - p.46, para. 9.30.

stance at the end of 2003. Nor does it provide a reasonable basis for concluding that failure to respect the safeguarding line would be contrary to the public interest.

Footway width

- 9.74 The perceived narrowness of the footway past 283 Edgware Road has been criticised. Even if the peak flow of pedestrians on Edgware Road generally coincided with the peak flow of pedestrians from the development, a Level of Service (LOS)^A in Category B would be achieved. WCC's suggestions that insufficient space had been deducted for items of street furniture such as trees, railings and the like and that no allowance had been made for 'platooning'^B were not supported by evidence.
- 9.75 The predicted average pedestrian volume for a Saturday peak is 12.6 pedestrians per minute and the effective walkway width is one metre. This gives a flow rate of 12.6 pedestrians/minute/metre. If the effective width of the walkway were halved, the flow would become 25.2 pedestrians/minute/metre. This provides a LOS of Category C,^C which is a desirable level of service. So far as platooning is concerned, assuming it would occur, a flow rate of 12.6 pedestrians/minute would give LOS Category C.^D If the effective walkway width were then halved, a Category D LOS is obtained.^E Thus, the LOS would be acceptable even with platooning and just half the width of walkway actually identified as available. Thus, even if one accepts WCC's points (which the appellant does not), the proposed pedestrian facilities would be able to accommodate the worst case peak pedestrian demands.

Parking spaces and policy

- 9.76 Whether the number of parking spaces should to be reduced from 223 to 180 to avoid the need for a right-turn phase at the Church Street junction is addressed above.^F However, separately from that argument, TfL contends that there is a policy justification for a reduction in car parking based upon application of the PTAL6 food supermarket standard set-out in the London Plan.^G
- 9.77 If applicable, the requirement would be for between 130 and 199 spaces. However, the standard is not applicable in this case. The parking is proposed to serve not just the foodstore but also the wider District Centre. The London Plan states that 'it is not possible to prescribe parking standards for mixed/multi-use developments as these differ widely'.^H Analysis of existing parking provision in the district centre^I identifies a parking ratio of 1 space per 96sqm of floorspace. For a District Centre location with a PTAL of 6, the London Plan recommends a maximum parking ratio of 1 space per 75-50sqm.^J At present, therefore, the district centre enjoys well below the permissible maximum. The 223 spaces proposed in Options A and B would replace 78 existing public parking spaces, giving a net gain of 145 spaces. Assuming that these spaces were shared with the District

^A Document CD53 sets out pedestrian theory and the calculation of Level of Service (LOS);

Document A7 - p.27, para. 6.20 - Category D (LOS) is acceptable although Category C is desirable.

^B Pedestrians in concentrated groups, eg. having alighted from a bus, instead of evenly spaced over time.

^C Document CD53 - p.18-4 - Exhibit 18-3, flow rate >23-33.

^D Document CD53 - p.18-5 - Exhibit 18-4, flow rate >10-20.

^E Document CD53 - p.18-5 - Exhibit 18-4, flow rate 25.2 falls into the >20-36 range.

^F Paras. 9.50-9.52.

^G Document D3 - p.29, para. 6.3;

Document CD32 - Policies 3C.22 and 3C.23 (p.125) apply the parking standards set out in Annex 4 (p.A19).

^H Document CD32 - Annex 4, p.A25, para. 28.

^I Document A8 - Appendix 2, pp.122/123.

^J Document CD32 - Annex 4, p.A23, Table A4.3.

Centre, the parking ratio would increase to 1 space per 79sqm.^A Even with the development in place, therefore, the District Centre would fall below the maximum standard in the London Plan. This has been accepted by TfL.^B

- 9.78 Thus, there is no freestanding policy basis for objecting to 223 spaces. Quite apart from the resultant parking provision still being below the maximum applicable for a District Centre, the proposed spaces would afford the opportunity to relocate some of the existing on-street parking provision north of the Church Street junction, helping to ease congestion on this part of the Edgware Road.

The height of the proposed tower – visual impact

- 9.79 There is no issue with WCC regarding the 22-storey height of the Option A tower.^C This is confirmed by the resolution to approve Option C, with its tower of the same height and design. However, WCC considers that the additional four storeys of the Option B tower make it unacceptable. The architectural design of the Option B tower is acknowledged as being of a very high standard. Also accepted is the generality that the taller the building, the more elegant it will appear. The issue is how the proposed height falls to be judged in the context of the site and its surroundings.

Context

- 9.80 Whilst there is a difference in character between the areas north and south of the Westway flyover, and north on the Edgware Road is a more secondary location than south of it, the distinction is not clear-cut. The tower blocks immediately north of the flyover (BT and Paddington Green Police Station) carry over, to an extent, the character south of the flyover.^D And not only are there tall buildings close to the north of the flyover, there are others further north.^E

- 9.81 WCC argues that the flyover creates a barrier, that the buildings either existing or planned to the south are much larger than those existing to the north, that the only tall building forming part of the local context for the appeal site is Paddington Green Police Station and that, while the relationship between it and the Option A tower is acceptable, the addition of a further four storeys is not.^F This argument should be rejected for several reasons.

- 9.82 It overplays the change in character and ignores the tower blocks north of the flyover other than Paddington Green Police Station.^G

- 9.83 The towers south of the flyover are close to the site and have clear visual connections with it. They plainly form part of the townscape context for assessing the site,^H as many views in and from Paddington Green make clear. The flyover itself is a subordinate feature in visual terms, only 5m high and lower than the podium from which the Paddington Green Police Station tower rises.^I

^A Document A8 – Appendix 2, p.123.

^B Document D6 – Mr Richards states that 'a case can be made that the District Centre (including the proposed retail floorspace) is served by a level of car parking below that envisaged in the London Plan for local centres ...' but goes on to suggest that a reduction is justified by the need, otherwise, for a right-turn signal phase.

^C Strictly speaking, 22 storeys plus mezzanine; similarly, Option B is 26 storeys plus mezzanine;

Document A17 sets out the building heights.

^D Pointed out by Mr Squire in re-examination.

^E Document A4 – p.9 – figure 14 shows the context.

^F Mr Clegg's view in cross-examination

^G Document A4 – pp.9/10, figures 14 and 16.

^H Document A4 – p.23, figure 52; p.25, figures 58 and 59; p.26, figures 64 and 65; p.27, figures 66 and 67.

^I Agreed by Mr Clegg in cross-examination.

9.84 WCC does not, in any event, regard the height of the Paddington Green Police Station tower as a constraining factor - Options A and C, both acceptable, are both taller than that building.^A Given that a building taller than the police station is appropriate, acceptance of Option A but rejection of Option B is difficult to follow.

9.85 There are already tall buildings on each of the four corners of the junction, north and south of the flyover, with Paddington Green Police Station very much the lowest.^B There is already a visual connection across the flyover in the relationship between the police station and the Hilton Hotel. Option B is the same height as the Hilton Hotel.^C Whether or not the context ('prevailing character of the area') for consideration of 'incongruity' in Policy DES 3(A)(3)^D is more local than the southern side of the flyover

- the full townscape context of the tall buildings in the area cannot properly be ignored either generally or in considering how the proposals relate to the Conservation Area;
- Policy DES 3 does not simply consider 'the prevailing character of the area within which it would be located'; it looks at wider context also;
- Option A satisfies DES 3 and tall buildings policy so far as WCC and the Mayor are concerned; and no issues other than height arise with WCC with regard to DES 3 and Option B;
- Neither CABE^E nor the Mayor considers a building taller than Option A to be inappropriate on the Site.

9.86 The visual connection between the tall buildings on either side of the flyover will only be strengthened in the future with the proposed tall buildings at Paddington Basin, whether the Grand Union (GU) Tower proposal or a different building. The site is designated for the tallest building in the special policy area and design must be of the highest quality.^F

9.87 Thus, the context for assessing the character and appearance of the adjacent Conservation Areas of Lisson Grove, Maida Vale and Paddington Green is one in which tall buildings already feature significantly. In that context, Option B, as compared to Option A, would not be perceived as incongruous or alien; rather, its additional height would serve to limit its impact further.

9.88 In reporting to Committee on the GU building, officers justified the proposed tower as being seen 'in the context of other high buildings around Edgware Road and Paddington, which already form a small cluster of high buildings on the skyline'.^G Despite the specific policy context for that application, similar considerations of context are relevant for Option B.^H The additional four storeys of Option B, forming an appropriate fourth tall building round the junction of Westway and the Edgware Road, would not be seen as out of character. This is reinforced by the 'gateway' nature of the site.

^A Document A17.

^B Document A4 - pp.9/10, figures 14 and 16.

^C Document A17 - the top of the building is 92m in both cases.

^D Document CD37 - pp.274-276.

^E Document A5 - Appendix 5.

^F Document CD35 - p.273, para. 5.71-5.73, and Map 5.1.

^G Document A4 - p.13, para. 6.4.3

^H That is not to use the GU building resolution as a precedent for a building of a particular (but lesser) height but to draw attention to the proper considerations other than the specific requirement for a landmark building in the Paddington Basin.

Gateway feature

- 9.89 Although the tower of Option A is of high quality design and meets policy, the additional height of Option B makes for a more elegant and beautiful building. This is important in this gateway location. WCC contests this point on the basis that a gateway feature is not necessary, or indeed desirable, in this location. However, in resolving to permit the GU Building, or at least treating its site as appropriate for a landmark building,^A this was a factor that WCC took into account. If it was appropriate there, it is also appropriate here.
- 9.90 To argue that different considerations apply and that the landmark status of the GU Tower could be justified as marking the most significant area of regeneration in the City is to miss the point. The junction of Edgware Road and the A40 marks one of the most important points of entry to the West End from the north and west. The provision of a beautiful and elegant tower together with the other major development occurring at Paddington Basin will together be perceived as marking the point of arrival in central London and the West End for travellers coming from the west and north. In particular, when approaching from the west, it will create the opposite side of a gateway to the new tall buildings in Paddington Basin and will complete the cluster of buildings on the four corners of the junction.

Certified Views

- 9.91 There are 21 viewpoints but only in ten is there actually a view of Option B.^B From the Marylebone Road (View 5B), Option B is seen in the context of the other tall buildings in the view. However, the acceptability of the views is not dependent on the existence of the GU Tower. From the north-east (Views 6 and 7B), both Options would be visible. The difference is that Option B, being taller, would appear more slender. Further, both Options would be seen in the context of taller development on the Paddington Basin Site and elsewhere. From the Edgware Road (Views 8 and 9B), Option B would sit just as comfortably as Option A as part of the cluster of tall buildings. Indeed, it is from the Edgware Road that the benefits of the taller and more slender Option B are readily apparent. From the bridge over the canal at Little Venice (View 11B), the transition in the sequence of heights from existing towers to new taller development within the Paddington Basin is more comfortable with Option B than Option A.
- 9.92 In the view from Hyde Park (View 12), the tower would be concealed within the cluster of existing buildings, including new tall buildings within the Paddington Basin Site. Option B would close the gap between two buildings but the effect would be difficult to discern at this distance and not significant. Mr. Clegg accepted that this was not a terribly significant viewpoint.^C From Regent's Park (View 16), the view is a distant one and the treeline is already punctuated by a number of tall buildings.^D Within that view, the increased skyline impact of Option B compared to Option A would be minimal. Indeed, it is in views at such a distance that the slenderness of the taller Option B exhibits its increased elegance. In relation to the GU Tower, officers advised that the limited views of

^A Document CD35 – the first part of Chapter 5 and Map 5.1 – even if the GU Building is not built in its current form, its location is designated as being for the tallest building in the special policy area and is required by the emerging UDP to be of high design quality. The plan submitted with Document B22 confirms the location for the tall Environmental Statement building.

^B Agreed by Mr Clegg in cross-examination – Views 1, 2, 5B, 6, 7B, 8, 9B, 11B, 12 and 16 – found in Document G7.11 – the same views of Option A are in Document G6.11; Document A44 has views of both Options, with and without the GU Tower.

^C Accepted by Mr Clegg in cross-examination.

^D Also accepted by Mr Clegg in cross-examination.

the building from Regent's Park and the distance from it would be insufficient to justify an objection to the proposal on those grounds alone.^A The same reasoning should apply equally to Option B, albeit that it would have a significantly reduced impact compared to the GU Tower.

- 9.93 Examining the impact of Option B compared with Option A from the certified viewpoints establishes that the Option B has distinct advantages. It does not have a significant impact compared with Option A. Quite the reverse – its taller, more slender and more elegant design would sit much more comfortably within the cluster of tall buildings.

GU Tower

- 9.94 WCC argues that it is not appropriate to take into account the development of the GU Tower in assessing either the context of the appeal site or the likely impact of Options A and B – because there is no guarantee that this building will be constructed. It is true that alternative plans are being discussed for the site.^B It follows from this that WCC's support for a 22-storey tower is not dependent upon its support for the GU Tower. The designs for Options A and B are not predicated on the GU Tower being constructed – but they would be appropriately respectful to a landmark building of that scale.

- 9.95 However, the resolution to approve the GU Tower indicates the scale of development that WCC believes the Paddington Basin site is capable of taking. Moreover, alternatives are under discussion and these must be in the context that the site is identified for the highest building in the Paddington Special Policy Area (PSPA) in the emerging UDP.^C The emerging UDP also requires the buildings in the PSPA to be of the highest design quality.^D Current indications from the developer^E are that the replacement design may be just 12m lower than the GU Tower, which would still mean that Option B would be subordinate to it in height.

- 9.96 It is appropriate to take into account the nature of the development that is proposed for Paddington Basin and the policy requirements of the PSPA. It is a major and substantial development, an Opportunity Area within the London Plan. Whilst there may still be discussion over the precise detail of the built form, it is clear that a very tall structure will come forward on this site. It is therefore right to take that into account as informing the context within which the impact of Options A and B falls to be assessed.

Support from the Mayor and CABE

- 9.97 The London Plan states that the Mayor will promote the development of tall buildings when they create attractive landmarks enhancing London's character, help provide a coherent location for economic clusters of related activities and/or act as a catalyst for regeneration and where they are also acceptable in terms of design and impact on their surroundings.^F The Mayor considers the site suitable for a high rise residential tower; he 'strongly supports the taller of the two towers on the grounds that it delivers more residential accommodation and affordable housing and a better design'.^G Indeed, the

^A Document A2 – Appendix ND16, p.13 (top of page).

^B Document B18.

^C Document B22.

^D Document CD35 – p. 273, para. 5.71.

^E Document A43.

^F Document CD32 – p.181, Policy 4B.8.

^G Document A5 – Appendix 5, p.31.

letter adds that the site is a suitable location for a 100m high residential tower, the taller of the towers producing the most elegant design solution.

9.98 Policy 4B.8 requires Boroughs to take the reasons why the Mayor supports a tall building into account when assessing planning applications. Accordingly, the London Plan expects the views of the Mayor to be given weight,^A a point not made in committee reports.^B

9.99 So far as CABE is concerned, it considered a previous Squire and Partners design for a tower of 28 storeys. It thought that the proposed tower had the potential to be a beautiful structure, agreeably slender in many key views. It had no objection to the proposed height of the tower.^C Members do not appear to have been reminded of CABE's views when they came to consider Option B. CABE has been consulted on Options A and B and has not objected.

Conclusion on visual impact

9.100 The design of the proposed towers has been thorough and thoughtfully conceived by an extremely skilful and talented architect. It is of high quality. The proposals have been enthusiastically supported by CABE and the Mayor, both of whom were positively in favour of the Option B scheme. Option B would sit more comfortably within the cluster of tall buildings in the area and have a minimal additional impact when seen on the skyline. The extra height would produce a more elegant architectural form, enhancing the apparent slenderness of the building. Option B accords with Policy DES 4. It would not 'seriously conflict with the prevailing character of the area'.

Building E2

9.101 WCC contends that, in Option B, Building E2 conflicts with Policy DE7 of the adopted UDP because its height and bulk would be visually prominent and over-scaled and would thus detract from the character and appearance of the Paddington Green Conservation Area.^D Building E2 in Option B is one storey higher than in Option A. It is this difference that is said to give rise to the conflict with policy.

9.102 This issue falls to be addressed from the perspective of a person standing on Paddington Green looking in the direction of building E2. Here, the character and appearance of the Conservation Area is already heavily influenced by tall buildings (the Hilton Hotel and the Paddington Green Police Station) and the general urban context, including the Westway with its road signs and gantries. Further, the viewer will be readily aware of the presence of tall buildings on the Paddington Basin site.^E

9.103 The additional storey assists in the stepping up from Building E1 to the higher 26-storey tower in Option B.^F It would only be visible from Paddington Green through a gap over the low existing building (no. 14) adjoining the West End Green site to the north. In other views from the Green, the increased height of Building E2 would largely be obscured by Building E1.^G From within the Green, the dense tree cover means that the additional storey will be largely screened even in winter.

^A Accepted by Mr Clegg in cross-examination.

^B Documents CD22 and CD13.

^C Document A5 – Appendix 3.

^D Document B3 p.23, para. 8.18.

^E Document A37 – especially pp. 2, 6, 11, 13 (revised as Document A37A) and 15.

^F Document A4 – p.20, para. 6.8.3.

^G Document A4 – save for a narrow zone on the far side of the Green, identified by Mr Squire on p.21, paras. 6.8.4/5 and accepted by Mr Clegg in cross-examination.

9.104 Accordingly, there would be no material impact due to the additional storey of Building E2 in Option B. WCC accepts that Building E2 in Option A would preserve and enhance the character and appearance of the Conservation Area. It would do so in Option B as well. Option B accords with Policy DES 7. If the Secretary of State thought otherwise, then a suitable condition could be imposed requiring the design of Building E2 in Option B to correspond with the design for that building in Option A.

Other design issues

9.105 Sainsbury's, in seeking to protect the investment in its option over 283 Edgware Road, has raised other design issues which lack support from WCC, the Mayor or CABE. Sustainability is simply dealt with. The site is highly sustainable, given its excellent public transport connections, the designs of both Options incorporate many sustainable features and further aspects can be dealt with at a more detailed stage, as required by WCC. The two most substantial points made by Sainsbury's were that Options A and B should both be rejected because they do not incorporate 283 and that the design of the schemes is not of a sufficiently high quality.

Sainsbury's special interest in design issues

9.106 Sainsbury's design stance is a partial one, driven by its wish to recover the value invested in the option over 283 obtained from Mr Dean's company. Sainsbury's needs to recoup its investment and thus argues, contrary to the views of all others, that 283 is a necessary part of the development of the site. To the extent that there is any element of Sainsbury's case that gives rise to uncertainty, debate or doubt, the history of Sainsbury's involvement demands that that case be examined critically. It can be seen how little concern there was for issues now said to be of considerable importance during negotiations between the appellant and its advisers, Sainsbury's and Mr Dean.^A Design issues (and others such as daylighting) only appear to have emerged when it appeared that West End Green would not deal with Sainsbury's on the terms it required, would pursue options without 283 and that WCC might support that approach. Sainsbury's only commissioned its own scheme in March 2004.^B

9.107 There are, moreover, from looking at its own scheme, substantial reasons for doubting the validity of Sainsbury's approach to design. The scheme is still at an early stage in the design process, despite the submission of the planning application. CABE has major criticisms^C not yet translated into amended designs. Security issues have not yet been properly considered.^D Documents produced late in the inquiry in criticism of the appeals schemes^E make no comparison with Sainsbury's proposals, notwithstanding the relative heights (and the locations of the higher elements^F) in its own scheme. It is difficult to see how the internal route in the Sainsbury's scheme would attract pedestrians from their main route diagonally across Paddington Green via Harrow Road to the Edgware Road tube

^A Document A32 is a file of correspondence on the matter

^B After the last meeting with West End Green documented in A32; confirmed by Mr Chetwood in cross-examination.

^C Document E11 – echoed by Mr Squire in Document A4

^D Most obviously in the route from Church Street, which is not overlooked in the Sainsbury's scheme, and the blank frontage to Newcastle Place.

^E Documents E16 and E17: E16 is criticised as inaccurate and potentially misleading (see Mr Squire's response in Document A42); the accuracy and validity of E17 are also thought doubtful.

^F Documents E7.1 and E7.2 show where the higher parts of the Sainsbury's scheme are, including the 'shoulder' of the tower, 53.5m high and closer to Paddington Green than the elements of Options A and B being criticised.

station.^A It might just be possible to divert pedestrians along a regenerated Newcastle Place but it is very unlikely that any greater diversion would prove attractive.

Lack of inclusion of 283 Edgware Road

9.108 It is not necessary for 283 to be included within the development of the site - certainly not to the extent that Options A or B should not be permitted to proceed without it. After many years' consideration of the site, WCC has reached the same conclusion. It has not only resolved to permit Option C without requiring it to include 283 but does not object to Options A and B for excluding 283. Nor does the Mayor require 283 to be included as part of the overall design, save to the extent that land may be required for highways work. Nor has CABE objected to the design on the basis that 283 should be included.^B

9.109 A number of previous schemes have not included 283 and therefore have not regarded its retention as a problem.^C Indeed, a high quality design for the site does not require 283.^D There is ample space for pedestrians and traffic (dealt with above). Even if 283 were available, the design need not be changed.^E It was reached independently of the retention of 283 but such 'quirks' or 'aggravations' can lead to interesting and attractive solutions.^F If 283 did become available, there are a number of options for dealing with the building or space.^G The retention of older buildings alongside new development is not uncommon in London and in Westminster, in particular, and the juxtaposition of new and old is a feature of many urban environments.^H

9.110 In view of the possible future options, it would be desirable to advance, within reason, the acquisition of 283. The section 106 obligations for Options A and B contain provisions to achieve that, having regard to the fact that it is not a necessary part of the appeals schemes. The terms of the obligations proceed on the basis that 283 is not required for the development of the site but is a desirable feature if it can be secured on reasonable terms. Sainsbury's criticises the obligation because it does not require the acquisition of 283^I but that is on the basis that it is an essential element in the development of the site, which the appellants and others strongly dispute.

High quality of design

9.111 The designs for Options A and B have been produced over a lengthy period of thought, consultation and refinement by a highly reputable architect with considerable expertise in designing new buildings for London. With very limited exceptions, his designs are supported by WCC and the Mayor. The inquiry can have confidence in the appeals schemes given the detailed information and plans available.^J Any suggestion^K that Mr Squire has not properly considered and assessed all the relevant aspects and constraints of

^A Pedestrians generally take the shortest and easiest route and there is a subway entrance to the tube on Harrow Road in front of Paddington Green Police Station.

^B Document A5 - Appendix 3 (in the context of the 28 storey scheme).

^C Document A1 - p.7, para. 2.4. (1989, 1991), and pp.9/10, para. 2.18 (officer recommendation to approve, 2001).

^D Document A4 - p.19, paras. 6.7.6-11.

^E The view expressed by Mr Coleman in cross-examination.

^F The words used, and view expressed, by Mr Squire in cross-examination.

^G For example, see Document A37 (pp.16-18) and also Document A44.

^H Documents A4 (pp.18-19) and A37 (pp.16-18). Mr Lowndes accepted in cross-examination that there was scope for the beneficial re-use of 283. Mr Chetwood saw 283 only as an obstruction (though the Sainsbury's scheme is predicated on the assumption that it is demolished).

^I Document E14 - Section 3.

^J A point remarked upon by CABE - Document A5, Appendix 3

^K As there was by Sainsbury's in cross-examination of Mr Squire.

the context of the site should be given the shortest shrift having regard to all the material before the inquiry, Mr Squire's unrivalled experience of the site itself and the context of previous proposals for the site.^A The designs are of such high quality that they amply fulfil the requirements of policy and justify the grant of planning permission.

9.112 Sainsbury's disagrees. However, there is the fundamental danger in Sainsbury's approach that subjective issues of design preference become wrongly muddled with the issue of whether the proposed designs are of high quality.^B Major design issues were not raised in earlier negotiations between West End Green and Sainsbury's.^C It may be inferred that Sainsbury's was generally content with design and function, at least until the negotiations did not proceed as it wished. In changing from its apparent acceptance of the design approach, Sainsbury's has moved out of step with WCC, the Mayor and CABE.

9.113 The appeals proposals deserve to succeed on their own merits. The Sainsbury's scheme does not provide an appropriate comparison.^D It has some way to go before it is in a final form. CABE considers that the concept has not yet been successfully translated into a wholly convincing scheme.^E Nevertheless, site constraints have led to common design threads between Options A, B and C and Sainsbury's scheme.

9.114 A tower or high building on the southerly part of the site is a common solution. Edgware Road is given an active and strong frontage which includes a new superstore.^F All the schemes have within the site taller buildings than some of those currently fronting Edgware Road in the immediate vicinity of the site.^G All the schemes would inevitably be visible from the Paddington Green Conservation Area.^H Both schemes create routes through the site on roughly north-south and east-west axes – the principal difference being that Sainsbury's east-west route is an internal one whereas, in the appeals schemes, it is outward-facing to seek to integrate and regenerate Newcastle Place.

9.115 Notwithstanding that, there are inconsistencies in Sainsbury's approach. It is not clear why the Church Street end of the Paddington Green frontage (which has the tallest existing building – the Mary Adelaide Building) should be regarded as more sensitive to

^A In his proof (Document A4) and in evidence in chief, with the benefit of a PowerPoint presentation (Document A44), Mr Squire explained the approach he had taken to the site and its context. His design analysis is in Section 6 of Document A4 and includes, at paras. 6.6.1-13, the reasoning underlying the 'mansion block' approach, with its 'common architectural language', for all of the buildings save the tower. He re-emphasised in evidence in chief his belief in this design approach. He also addresses, in Section 9 of Document A4, how the proposals relate to guidance produced by CABE.

^B PPG1, Annex A, and draft PPS1, Annex C – both stress the need for good design and warn against the imposition of a particular architectural taste or style arbitrarily.

^C As its absence from the correspondence in Document A32 shows.

^D Mr Squire's comments on the scheme are in Section 13 of Document A4.

^E Document E11.

^F Sainsbury's criticisms failed to take account of the most recent amendments showing an enlarged retail frontage, three superstore entrances and removal of unattractive elements such as bin stores at the northern end.

^G Mr Squire explained his approach to the design of tower and pavilions and to creating simple, clear and repetitive forms, articulated into separate elements. Mr Coleman described the virtue of closely related forms in creating streetscape strength, which is a civic virtue. Mr Chetwood said in evidence in chief that the scale of the pavilions was the correct starting point for the site (though he went on to say that there were four separate areas within the site, not warranting the same treatment).

^H Document A37, pp.11, 11A and 29 (revised as Document 37B), Document E21, drawing no. 1889 (3) 102 [A] and Documents E7.1 and 7.2, showing that Sainsbury's scheme (stepping up along Newcastle Place) brings a higher form of development closer to Paddington Green. It can reasonably be inferred, bearing in mind earlier schemes as well, that this is a requirement in order to achieve the necessary quantum of development to regenerate the site. However, views from the Green will be of new development in the context of a number of existing tall buildings, already addressed above.

the height of the proposed pavilions when the location of the lower buildings further along the frontage is apparently more able to accommodate the taller parts of Sainsbury's scheme. Also, the northern side of Church Street appears not to be regarded as relevant to the design of the new buildings despite the proximity of the tower blocks there. Criticism of the north-south pedestrian route within the site is unjustified given the overlooking residential property in the appeals schemes compared with the unbroken high wall in Sainsbury's own scheme; similarly, the appeals schemes have residential frontage on Newcastle Place compared with probably closed (in the evenings) office frontages along the internal route in Sainsbury's scheme.

9.116 There are other ill-founded criticisms. The proposed Church Street frontage is suitable and acceptable.^A Clearly, new buildings must sit satisfactorily alongside those remaining – but it cannot be argued that a corner tower and a progressive stepping-down of buildings is the only appropriate solution. Creating a contrast is a perfectly acceptable solution. Similarly, the criticism that the proposals do not satisfactorily turn the corner of Edgware Road and Church Street is unfounded. CABE does not support that criticism. The revised designs provide a clear and well-designed corner of the building. The building (E1) fronting Paddington Green has been designed with the varying heights and styles of the existing buildings in mind; it respects the massing of existing buildings, their varying appearance and heights and their building lines. Again, one cannot be dogmatic about what may be 'the' correct solution. The criticisms confuse personal aesthetic preference with what may be appropriate in design terms.

9.117 Options A and B stand on their own considerable merits. Criticism of the Sainsbury's scheme is not a necessary part of the appellant's case. However, Sainsbury's has pursued a comparative criticism of the appeals proposals despite a still embryonic scheme which does not represent a reasonable alternative to Options A or B, were they to be refused. Indeed, since Sainsbury's only controls 283, it is not in a position to deliver regeneration of the site. Its attempt to ransom the appellant has not succeeded to date and there is no sound basis for assuming it will be successful in doing so in the future.

Effect on sunlight and daylight

9.118 There is no issue between the parties regarding the effect of Options A and B upon the sunlight reaching neighbouring properties. Neither would have a significant impact. The focus at the inquiry has instead been upon the whether or not Options A and B would have such a material effect upon the amount of daylight reaching neighbouring properties that planning permission should be refused.

9.119 WCC took this matter into account. It has been aware of the issue for a number of years.^B Officers visited relevant properties in the area and formed their own view as to the likely effect of Options A and B on daylight levels. The view was taken that any development coming forward on the appeal site was bound to have some adverse effect on daylight levels but that had to be balanced against the fact that the site is in the centre of a major city and that the impact may be the price that has to be paid for regeneration.^C It was therefore only Sainsbury's that attempted to raise an objection.

9.120 Emerging Policy ENV 12(E)^D makes it clear, where the resulting level of daylight to existing dwellings would be unacceptable, that planning permission will be normally

^A Document A37, pp. 3 and 8, and Document A42.

^B Documents CD5 (pp.67 and 76), CD16 (p.20), CD11 (p.109) and CD18 (p.105).

^C All acknowledged by Mrs Coulson in cross-examination.

^D Document CD35 - pp.487/8.

refused. Thus, what needs to be established is the level of daylight that will remain after development has occurred and whether that level would be acceptable.

9.121 Sainsbury's, using Building Research Establishment (BRE) Guidelines,^A relies solely upon calculations of Vertical Sky Components (VSCs) for windows in close proximity to the appeal site, contending that if, development results in a VSC of less than 27% and a change of VSC to less than 80% of its former value, a 'significant loss of daylight' would arise.^B This is an incorrect application of the criteria. The BRE Guidelines make it clear that those criteria represent the threshold of noticeable change rather than a threshold of acceptability; they explain that, if the VSC with the new development in place is both less than 27% and less than 80% of its former value, then occupants of the existing building will notice the reduction in the amount of skylight.^C It has to be remembered that the Guidelines 'should not be seen as an instrument of planning policy' and 'should be interpreted flexibly because natural lighting is only one of many factors in site layout design'.^D The appeals schemes do not produce VSCs that are out of kilter with any other central London location. The only properties where the level is likely to fall below 11.7 are 3 Princess Louise Close (one window) and 14 Paddington Green (eleven windows) – but these windows fail the BRE test of noticeability in the Sainsbury's scheme as well.^E

9.122 The BRE criteria were derived from considering a typical housing estate rather than a central London milieu.^F Thus, the appropriateness of using the criteria is questionable in this central London location in any event, as Dr Littlefair explains in his report into Sainsbury's own scheme.^G

Comparison with the Sainsbury's scheme

9.123 Sainsbury's appears to take the view that its scheme has an acceptable impact upon daylight levels in surrounding properties. But what was assessed was an earlier scheme, not the one submitted to WCC.^H In any event, there is little difference between the impact of the Sainsbury's scheme and the appeals schemes.^I It is possible that slightly more

^A Document E/PJL/2 - Appendix 3 contains an extract from the BRE Report 'Site layout planning for daylight and sunlight: a guide to good practice', of which Dr Littlefair is the author; it may also be found in Document A11.4 - Appendix 14.

^B Document E/PJL/1 - p.4 and p.14, para. 9.1, confirmed in cross-examination.

^C Document A11 - Appendix 14, p.5 - the emphasis is the appellant's. Dr Littlefair sought to argue that this was not a correct reading of the BRE Guidelines - but it is a reading that Sainsbury's has put forward previously, in submissions to the inquiry in 1997 relating to a development including its proposed store at Wilton Road, Victoria. Sainsbury's case there was that breach of the criteria used by Dr Littlefair resulted in a noticeable change but that nowhere did the guidelines equate 'noticeable' with 'unacceptable'. Sainsbury's contended that it was not the light taken away that was the issue but rather the adequacy of the light that remained after development; it contended that VSCs as low as 11.7 were acceptable. (The report is at Document A11.4, Appendix 11A; Sainsbury's case is reported on p.14, paras. 56-65.) I was the Inspector at that inquiry; I concluded (p.45, para. 185) that the calculations showed 'a material worsening of daylight standards' in some properties but not that the resultant levels would be unacceptable.

^D Document A11.4 - Appendix 14, p.1, final para. in the right hand column.

^E Conceded by Dr Littlefair in cross-examination.

^F Document A10 - p.14, para. 2.14.

^G Document A33 - p.12 para. 4.3.

^H Dr Littlefair had indicated in cross-examination that there were some significant differences between what he had assessed and what had been submitted to WCC and that there were aspects of the latter scheme that he would want his client to revisit. Document E7.2 shows, for example, the change in the heights of the tower and its abutments along Newcastle Place and also the roundels on Edgware Road.

^I Document E7 is a joint statement by Mr Webb and Dr Littlefair identifying/explaining areas of both agreement and disagreement;

Document A34 is Mr Webb's summary comparative assessment of Options A and B with Sainsbury's scheme.

occupants of nearby buildings would notice a change in daylight with the appeals schemes than with the Sainsbury's proposals – but that does not mean more people would be left with a residual amount of daylight that would be unacceptable.

The use of VSC

9.124 A VSC only considers the amount of sky visible at the face of the window. It does not take into account the number of windows in a room. It does not take into account the size of a window. A room with a window the full height and width of the room and a room with a window the size of a postage stamp would have the same VSC, all other factors being equal. It is not a measure of the actual light within a room but a measure of the light potentially available.^A The use of VSCs is thus of limited assistance in addressing the requirements of Policy ENV 12. That requires consideration of the resulting level of daylight within properties. VSCs do not provide this. VSCs cannot, in isolation, establish that a proposed development is contrary to Policy ENV 12.

Average Daylight Factor (ADF)

9.125 ADF can examine the resulting level of daylight in a room after development.^B A number of assumptions had to be made in order to carry out the ADF assessment^C but sensible and reasonable values were adopted. The conclusion of the study is that the vast majority of residential properties would not be adversely affected.^D

9.126 Looking at all of the evidence together, it has not been established that the proposed developments would result in residual levels of daylight in nearby properties that are unacceptable in the context of this central London location and the designation of the site in the UDP. The proposed developments do not conflict with Policy ENV 12.

The relevance of 283 and ransom value

9.127 It is Sainsbury's primary contention that 283 is an essential element in the development of this site, which should not proceed without it. That issue is addressed above.^E It is not a proposition accepted by either the appellant or WCC. It may be desirable in some respects to incorporate 283 within the wider development of the site but this does not mean that it should be required as part of the present appeals, or even at all – or that it should be pursued at all costs.

9.128 It is clear from the history of the site, and from the expectations of Mr Dean, that 283 has proved a major obstacle to the redevelopment.^F Also, it is common ground that the appeal site is urgently in need of regeneration and that it is important that it should be redeveloped.^G

^A Dr Littlefair agreed all of these points in cross-examination.

^B Mr Webb calculated ADFs post-development. His approach was criticised by Dr Littlefair, who suggested that it could not be used because there was insufficient data regarding the rooms affected to be able to apply the methodology properly.

^C The inputs into the calculation are: (1) the diffuse transmittance of the glazing taking into account blinds or curtains or dirt on the glass; (2) the net glazed area of the window; (3) the total area of the room surfaces; (4) the average reflectance of room surfaces; (5) the angle of visible sky. Mr Webb explained and Dr Littlefair accepted that (2) and (5) are known values.

^D Document A10 – Mr Webb outlines the three main methods of measuring impact on daylight in Section 2; Documents A11.1 and A11.2 – Appendices 1, 2, 5, 7 and 9 give, respectively, the analyses for Option A, Option B, the earlier Llewellyn Davis scheme, Option C and Sainsbury's scheme.

^E Paras. 9.108-110.

^F Document A1, Section 2, and Document A16, paras. 22-57.

^G Document CD4; also Document A1, Section 2.

9.129 It is clear from correspondence and the evidence to the inquiry^A that, whatever impression may have been conveyed to WCC in seeking to persuade members to require West End Green to reach agreement with Sainsbury's,^B Sainsbury's is clearly not willing to make 283 available to West End Green 'at no cost'^C or to 'hand over [the freehold] for free'.^D It wishes to 'protect [its] investment'.^E

9.130 Unless it is concluded that 283 is truly an indispensable component of the development of the site, and that Options A and/or B cannot proceed without 283, then it is proper to take into account the difficulties that 283 has already presented to the regeneration of this area and the fact that it continues to present an obstacle to regeneration.

9.131 Mr Dean has exaggerated expectations of being able to obtain in the order of £21 million for his property.^F The option granted to Sainsbury's^G perpetuates the difficulties by:

- proceeding on the basis that 283 has ransom value with respect to the development of the site^H (at £9 million or thereabouts rather than Mr Dean's £21 million);
- failing to recognise that, whilst the incorporation of 283 in the wider development of the area may be desirable, it is not essential;
- creating a serious impediment to enabling the desirable incorporation of 283 from proceeding, demonstrated by West End Green's frustrated attempts to negotiate an agreement on reasonable terms with Sainsbury's.^I

9.132 The difficulties in incorporating 283 have been amply illustrated by Sainsbury's seeking to protect its investment in the property. Through the option, Sainsbury's^J has expended £2.6m in the non-returnable option fee,^K agreed a purchase price, if the option is exercised, of £5.6 million^L and agreed to pay interest quarterly in advance at the minimum interest rate of 5% on the purchase price (no less than £280,000 per annum) from July 2002 until purchase or the expiry of the option after five years.^M

9.133 Even if Sainsbury's did not exercise the option, and let it run to expiry, it would incur expenditure of at least £4 million.^N Even if the option were to be exercised at the end of September 2004, Sainsbury's would have spent at least £3.23 million^O before incurring the purchase price and would then have spent a total of £8.83 million in acquiring 283. There can be little doubt, even absent the documentation, that Sainsbury's has been committed to defending its position on the ransom position of 283 since July 2002. Sainsbury's approach to the issues in this inquiry and to Option C has to be judged in the light of the considerable financial commitment. As Sainsbury's frankly stated in the

^A Document A32 and Mr Forster in cross-examination.

^B Which, apart from purchasing 283, would have involved enabling Sainsbury's to operate the proposed superstore without putting it on to the market for competition from other operators.

^C Document A32 - pp.50 and 57B.

^D Document A32 - pp.56-57.

^E Document A32 - p.134.

^F Evidence given through his counsel, Miss Patry.

^G Document A32 - pp.1-13. Winterline is controlled by Mr Dean and West End Green (Edgware Road) Ltd is controlled by Sainsbury's.

^H Conceded by Mr Forster in cross-examination.

^I Document A32 - p.14 *et seq.* especially pp. 78-9, 105-6, 134-8.

^J The position was explored in detail with Mr Forster in cross-examination.

^K Document A32 - p.3, clause 1.

^L Document A32 - p.4, clause 3.2.1.

^M Document A32 p.4, clause 3.2.2.

^N £2.6 million plus five years' interest at no less than £280,000pa.

^O £2.6 million plus two years' and a quarter's interest at no less than £280,000pa.

meeting with West End Green on 1 December 2003, it had not wanted to delay the project but had to protect its position on road widening and its investment to date in the site.^A

9.134 It is clear that WCC understood^B Sainsbury's to be willing to transfer 283 to West End Green at no cost in return for market terms for the letting of the new superstore.^C However the impression arose, it is plain that Sainsbury's did nothing to disabuse WCC of it – which was favourable to its case that it would transfer 283 to West End Green 'at no cost in conjunction with a market rent for the store'. That was simply not true.

9.135 The relevance of the difficulties with 283 is not controversial.^D In the circumstances, the difficulties in achieving a satisfactory resolution to the acquisition of 283 are a factor supporting its exclusion from the development of the site. There is no reason in law why these difficulties should not be a material consideration in land use planning terms. The issue relates to the ability to incorporate 283 within the wider site within a reasonable time to enable development to proceed after a prolonged period of delay. The fact that the issue relates to financial expectations is not a reason for regarding the consideration as legally irrelevant since financial issues may be material considerations providing they arise for planning reasons.^E

9.136 Whilst it is not essential to acquire 283 and incorporate it into the development of the site, the desirability of doing so, if reasonably possible, is reflected in the section 106 obligations executed by the appellant, committing it to use best endeavours on reasonable terms to secure 283. This is based on an approach which excludes the misconceived ransom which Sainsbury's and Mr Dean have to date attached to 283.

9.137 Mr Dean's complaint that excluding 283 from the scheme on the grounds of ransom value is an unfair and wrongful deprivation of his property rights (and conceivably contrary to his human rights, or at least those of Winterline Limited) is misconceived. Planning control exists for the orderly control of development in the public interest, not for the protection of private expectations of value. Also, 283 only has the enormous value attributed to it by Mr Dean on the basis that it is a ransom to the development of the site. If it is not, as the appellant and WCC contend on proper planning grounds, then the ransom value does not exist and Mr Dean's expectations are frustrated. The fact that the incorporation of 283 may be desirable does not make it essential and Mr Dean's entire position proceeds on the incorrect basis that it is essential. If the appeals were to be dismissed on the basis that 283 is required, it would doubtless be simply because 283 is required in land use terms – not because it would protect Mr Dean's aspirations as to land

^A Document A32 - p.134, note of 1.12.03, the accuracy of which was agreed by Sainsbury's at p.136. CF (Mr Fenner, Sainsbury's Director of Property Delivery) indicated that he had never paid an option figure above £250,000 and thus demonstrated that the option paid for 283 was ten times the sum he thought reasonable – although clearly Sainsbury's had already entered into the option. It is a clear indication of the importance Sainsbury's had attached to securing a ransom over West End Green's development proposals.

^B Document CD15 - the report of 21.8.03 (incorporated in later reports), p.9, 6th para., and p.22, 2nd & 3rd paras.

^C Document A32 - pp.67-68 and 72A-72B; letters of 15.8.03 ('Sainsbury's has offered the property without ransom') and 21.8.03 ('Sainsbury's would be prepared to transfer the freehold of the property... at nil cost...').

^D Mr Forster accepted in cross-examination that (provided 283 was not found to be indispensable) it was open to the Secretary of State to take into account as a material consideration the difficulties which the acquisition of 283 presented to the achievement of the needed regeneration of the site.

^E For example, in the securing of financial contributions under planning obligations. See also Document A57 - *R v. Westminster City Council, ex parte Monahan* [1990] 1 QB 87, in which the Court of Appeal held that the financial effect of enabling development could be a material consideration; in particular, see p.111 C-G. That section is reproduced in Document A55, pp.52/53, with emphasis added by the appellant and the comment that it is not a big step from that to the relevance of a ransom position in frustrating development.

values. Similarly, a conclusion that 283 is not essential to the development of the site would similarly be on land use planning grounds.

Community and environmental benefits

9.138 Whatever the provisions of the WCC's adopted Policy STRA6 and its Supplementary Planning Guidance, the test to be applied when examining the appropriateness of requested benefits for a planning obligation are those set out in Circular 1/97.^A

9.139 WCC seeks a sum of £750,000 to spend on community and environmental benefits. The appellant disputes that a sum of this level is fairly and reasonably related in scale to the proposed development. WCC argues that the sum can be justified by reference to the package of benefits negotiated in relation to the development of Paddington Basin. But that does not provide justification for a package of benefits on the appeal site because it relates to a development of a different scale. Also, the package negotiated was not tested at inquiry. The value of the Paddington Basin package lies more simply in looking at the kind of benefits that it might be appropriate to require on development of the appeal site.^B

Health

9.140 WCC seeks to justify a payment of some £400,000 on the basis of a need for additional infrastructure to meet the future medical needs of residents of the development.^C This is on the basis of a letter from the Primary Care Trust (PCT). It argued that the development would give rise to a need for a GP and an 'associated primary healthcare team'^D and that the building cost of providing a facility of 250sqm would be £400,000. It is argued that the Princess Louise Close surgery is at capacity and that the number of patients per GP in the local health care centres is above the national average.^E

9.141 The PCT calculation that 300 residential units generates a requirement for an additional GP together with support raises conflicts with the conclusions to be drawn from its own figures.^F This demonstrates that there is not a requirement for a whole GP plus support staff. A case can be made for a proportion of a GP but no more.

9.142 WCC has not considered the extent to which existing facilities might accommodate an additional proportion of a GP thereby meeting any additional demand without the need to provide an additional building. Whilst the PCT considers there is no scope to expand clinical capacity in the Princess Louise Close surgery, it does not say whether this is on the basis that a whole or a proportion of a GP is required. Nor has it looked at the Crompton Street Surgery or the Little Venice Medical Centre in the same light.

9.143 An alternative for calculating a contribution towards health facilities is on the basis of the GLA average household size for London and an average patient ratio.^G WCC suggested that average household sizes would be greater in the proposed development due to the

^A Circular 1/97 – p.2, para. 7 – accepted by WCC.

^B Agreed by Mrs Coulson in cross-examination.

^C Document B8 – p.16, para. 5.8.

^D Document B9 – Appendix 8, p.155, 2nd para.

^E Document B10.

^F Princess Louise Close surgery has the equivalent of 4.25 GPs and 8385 patients on the list – but a theoretical calculation of 300 dwellings x 4.25 GPs = 1275 residential units = 6.6 patients/dwelling; similarly, Crompton Street surgery has 1 GP and 3600 patients on the list (12 patients/dwelling) and Little Venice Medical Centre has the equivalent of 3.5 GPs and 4793 patients on the list (4.5 patients/dwelling).

^G Document A46 sets out Mr de Lofbiniere's calculation on p.2.

level of affordable housing – but that was not substantiated by any evidence.^A WCC has not established that a contribution of £400,000 for medical facilities is reasonably related in scale to the proposed developments. The appellant's calculations are to be preferred. A contribution of £150,000 to health facilities can be seen to be reasonably related in scale to the proposed developments.

Education

9.144 WCC argues that a contribution of £150,000-£200,000 is justified. The basis for calculating that figure was not set out until later in the inquiry.^B A temporary classroom would cost £60-80,000 and would accommodate 30 pupils – a cost per pupil of £2,000. Using GLA child yield figures, the cost of providing temporary classrooms for all the children likely to come from the development would be £218,000 for Option A, £256,000 for Option B. However, this calculation assumes that all children are of primary school age. In reality, there will be a range of ages. For children of secondary school age, the new City Academies planned for Oakington Road and Westbourne Green would be able to accommodate demand.^C WCC has not established that the scale of the contribution it is seeking is fairly and reasonably related to the development proposed.

9.145 In the circumstances, the appellant's approach in identifying a figure of £175,000 is to be preferred as it is likely to make an appropriate allowance for the proportion of children of secondary school age and thus fairly and reasonably related to the development proposed.

Church Street market

9.146 WCC suggests that a sum of in the region of £100,000 would be reasonable in order to address improvements to the Church Street market, including new signage, new street furniture, lighting, improvements to projecting canopies and public art. The supermarket is expected to take business away from the market and the local shops in Church Street and Edgware Road but, with investment to improve its attractiveness to local residents, workers and visitors, the market could prosper.^D

9.147 It is not the role of the planning system to address issues of competition between retailers in town centre locations.^E In any event, WCC accepts that the development would bring an improvement of facilities in the area and would have the potential to generate more custom for the market. It does not follow that the supermarket would undermine the market – because of the potential additional footfall that development would bring.

9.148 The Environment Master Plan and the Church Street Action Plan both indicate that, even without the development, improvements to the Market are being targeted.^F Indeed, funding is being secured for the gateway feature in the next twelve months.^G These documents demonstrate that the issues surrounding the Church Street market are existing ones and are not generated by the development of the appeal site.

^A WCC relied upon an assertion in Document B8 (p.17, para. 5.10) that affordable units would generate high levels of occupancy; there is no evidence to support this assertion.

^B Document B8 – p.16-18, paras. 5.9-12, set out the initial case; Document B10 sets out a basis for calculation.

^C Document B8 p.17, para. 5.11.

^D Document B8 – p.18, para. 5.13.

^E PPG6, para. 1.1 and Draft PPS6, para. 1.6.

^F Document B9, Appendix 9, section 6, paras. 6.2 and 6.2.4, and Appendix 10, pp.258-9.

^G Document B9, Appendix 10, p.259, para. b7, confirmed by Mrs Coulson in cross-examination.

9.149 Any sum provided by the appellant in respect of public art could be used in Church Street if that were thought desirable.^A

9.150 Taking all these factors into account, WCC has failed to establish that a sum of around £100,000 is either necessary or fairly and reasonably related to the development proposed. £50,000 is an appropriate sum as a goodwill gesture but is not necessary in order for planning permission to be granted.

Conclusion on planning benefits

9.151 WCC has not produced evidence to demonstrate that a package of benefits amounting to £750,000 is reasonably related to the developments proposed. The package of benefits offered by the appellant is to be preferred as being more appropriately related in scale to the developments proposed.

9.152 Nonetheless, the unilateral obligations have a mechanism which allows the Inspector and/or the Secretary of State to determine the appropriate level of community benefits required.^B By an express indication of view in the decision letter (should the appeals be allowed), the appropriate level of benefit will become payable under the obligations.

Conclusions

9.153 In the light of the above, it is submitted that the proposed developments accord with the development plan and that there are no material considerations that indicate that planning permission should be refused for either Option A or Option B.

9.154 The proposed developments represent an outstanding opportunity to regenerate this important site with a scheme that encompasses an inspired design by a renowned architect. Regeneration will bring with it the attendant benefits of housing, affordable housing, jobs and impetus to the local economy of this socially deprived part of London. For too long the financial ambitions of landowners and the truculence of public authorities have stood in the way of the realisation of these benefits. The evidence adduced at the inquiry has shown how poorly the arguments against the proposals stand up to scrutiny.

9.155 In the light of the above, the appeals should be allowed and planning permission granted for both Options A and B.

^A Agreed by Mrs Coulson in cross-examination.

^B Documents A53 and A54 – see clause 1.2 in each.

10. THE CASES FOR OTHERS APPEARING AT THE INQUIRY

- 10.1 **John Walton**, representing **Paddington Residents' Active Concern on Transport (PRACT)**, explained that PRACT concerns itself only with major traffic and public transport matters. He provided not only a proof of evidence but also a separate 'address' to the inquiry.^A
- 10.2 He sees a clear need for setting back development to the line safeguarded in the UDP. Failure to do so would prevent, effectively for all time, many improvements in conditions for both traffic and pedestrians that could come fully to fruition on removal of 283. Also, studies for improvements, perhaps incrementally, north of Church Street, would be pre-empted by failing to set back the development. He also sees the need for a very high degree of assurance that 283 would be removed as part and parcel of the development. That might be achieved through Sainsbury's option on the property or through the 'best endeavours' of the appellant, if secured in the obligations. Failing that, the last resort would be to commit public funds to compulsory purchase.
- 10.3 One of the improvements he seeks is the provision of wider pavements. In this respect, he is critical of the pedestrian crossing at Broadley Street when 283 is not removed, though he can see the different advantages of both direct and staggered crossings.
- 10.4 He is also concerned about two factors that could increase the future load on the junction of Harrow Road and Edgware Road have not been properly taken into account. The first is that construction of the Crossrail station under Eastbourne Terrace would necessitate a temporary access point, for several years, to Paddington Station, which would transfer taxi traffic to that junction. The second is the risk that extension of the congestion charging zone would lead to providing a direct link between the A40(M) Westway and Edgware Road (the west-east and north-south charge-free routes).
- 10.5 **Victoria Glaessner**, on behalf of the **St Marylebone Society**,^B broadly welcomes Option A. She thinks that the tower, certainly at 26 storeys, would contribute to an incremental development of randomly placed tall buildings. That would make Option B overbearing, though the Option A tower would be a better match with existing tall buildings. Her three main concerns are traffic, bedding development into the Church Street ward effectively and the provision of 156 holiday flats.
- 10.6 All transport infrastructure should be in place before development proceeds. Edgware Road is a barrier to pedestrian movement already. If the proposed development is to be a success, serious attention needs to be paid to pedestrian permeability across Church Street, for existing and proposed residents – with well marked, safe and easy-to-use crossings. The existing underpass to the south should be closed off or redeveloped and the Edgware Road tube station modernised. Private cars are part of the reason for the barrier effect on Edgware Road. Road widening is supported in principle – but not if it would cause the same level of environmental degradation as on Cromwell Road. The proposal offers new opportunities for the Church Street market but only if provision is made for enhancing the area, making it more attractive for both traders and shoppers. At a time of acute shortage of affordable housing and key worker housing, the provision of 156 holiday flats must be unacceptable. They should be omitted in favour of more key worker flats or rentable accommodation.

^A Documents F1 and F4.

^B Document F5.

- 10.7 **Brian Eves**, on behalf of the **Hall Park Residents' Association**,^A sees the proposals as readily deliverable and able to secure the much-needed regeneration of the site. The idea of a 6-lane highway (as in Option C) is unpopular with the local community and could make Edgware Road more like Marylebone Road. It would make the road more difficult to cross. Also, it would simply move the bottleneck further north, to Maida Vale. He thinks the commitment to £550,000 in community benefits is welcome and fair.
- 10.8 **Mr M Dean** is Managing Director of M R Dean & Sons, which owns the freehold of 283 Edgware Road.^B He submitted a written statement^C and answered questions through his Counsel. The essence of the objection is that, if the appeal proposals go ahead, M R Dean & Sons' reasonable entitlement to compensation will have been avoided by the joint actions of WCC and TfL.
- 10.9 Road widening has been an objective since at least 1971. That requires acquisition of 283. Developers have always been told that a scheme that did not involve road widening would not find favour. M R Dean & Sons have thus always been safe in the knowledge that the site would be acquired and the company adequately compensated. It now appears that WCC and TfL have completely changed their position. The section 106 obligations require no more than that the appellant uses best endeavours to acquire 283 for £1.25 million or twice market value, whichever is the greater. Under principles established by case law,^D however, compensation could be expected to be very much greater. Only Sainsbury's has acknowledged the true level of compensation.^E
- 10.10 M R Dean & Sons wish to make clear that they are willing to help the regeneration of the area by giving up their site if a reasonable scheme is proposed and adequate compensation paid. That has always been their position. However, if the appeal proposals go ahead, they are left with an unattractive property in the middle of the pavement which either has to attempt to trade or has to be sold for far below the true compensation value. That is not acceptable. The situation can only be resolved by the appeals being dismissed and a comprehensive scheme, that includes 283, being implemented.
- 10.11 **J Simon Davies**, Chairman of the **Hyde Park Estate Association**,^F said that his members are dismayed and frustrated over the time it has taken to commence redevelopment of what has been an eyesore for twenty years. They want to see the proposed supermarket and car park built as soon as possible. They support PRACT's submissions on the full set back on Edgware Road and the removal of 283. They are critical of TfL, which has refused to use its powers of compulsory purchase and now insists that the car park should be reduced to 180 spaces.
- 10.12 **The Metropolitan Police** withdrew its objection on the final day^G of the inquiry having negotiated on the contents of the section 106 obligations and having seen the executed obligations. Its principal concern had been security at the high profile Paddington Green Police Station – essentially the overlooking of the rear yard from the proposed tower and the opportunity for reconnaissance or terrorist attack from it.

^A Document F6.

^B In fact, the freehold is now owned by Winterline Ltd, in which Mr Dean holds a controlling interest; the property is leased back to M R Dean & Sons, which ceased trading in 2002; all references to 283 Edgware Road include as well 5 Newcastle Place.

^C Document F7.

^D *Stokes v Cambridge* [1961] 13 P&CR 77.

^E See Document A32 for the Option Agreement between Winterline and Sainsbury's.

^F Document F9.

^G Document F12.

- 10.13 **Mike Way**, Chair of the **Church Street Neighbourhood Forum**, submitted a statement.^A He said he spoke primarily on behalf of residents groups and was looking for a 'good slice' of the section 106 financial package. That would be necessary to ensure that the foodstore would not lead to decline in the street market and could be directed to five practical projects – a shopfront improvement grant scheme, minimum standards of appearance for market stalls, gateway features at the entrances to the market, a sustained marketing campaign for Church Street as a tourist attraction and environmental improvements to under-developed spaces along Church Street. The total expenditure would be £254,000.
- 10.14 **Hans Norton**, Chair of the Planning Sub-Committee of the **Paddington Waterways and Maida Vale Society**, elaborated on his earlier letter.^B He is at odds with the Hall Park Residents' Association but endorses PRACT's highways concerns and the need to include 283 in redevelopment. Edgware Road is on a 'knife edge' at present – it takes only the slightest thing to cause havoc. He considers the 22-storey tower too high – 18 storeys might be the maximum acceptable to members. The way decisions are going (including the GU Tower) is leading to a micro-system of tall buildings, not simply a gateway. If a gateway is needed it should be to the conservation area as well – but it is not; what is proposed is not at a human scale. Indeed, the architecture of the whole scheme is poor – but, since it is no worse than many other developments, that objection is perhaps not as strong as the objection to the height of the tower. The inclusion of the holiday flats is a considerable disappointment. It will go against the creation of any social or group cohesion, or a sense of place or belonging. It is the opposite of what the area needs. The section 106 obligations are for ludicrously small amounts, especially given the pressure on public transport, the underground in particular. Even just 200 additional people using the tube station could take it to breaking point – so the answer should be to pay for its complete modernisation.
- 10.15 **Mary Griffiths** lives on the other side of Paddington Green. She submitted two letters to the inquiry as well as having written earlier.^C She said that the brochures circulated originally made no mention of car parking for 450 cars and is concerned about the implications for Church Street and Paddington Green of that much car parking for residents and supermarket customers. There would no longer be any peace and quiet. There should be no parking for the supermarket. Other nearby supermarkets have no car parks. Also, and especially if there was no supermarket car park, Edgware Road would not need to be widened as much as proposed.

^A Document F10.

^B In Document G4.

^C Document F11 and in Document G4.

11. WRITTEN REPRESENTATIONS

- 11.1 The only written representations (save one) are those written in December 2003.^A A number of the authors (PRACT, the St Marylebone Society, Mr Dean, the Hyde Park Estate Association, the Metropolitan Police, the Paddington Waterways and Maida Vale Society and Mary Griffiths) also appeared at the inquiry. Their concerns are reported above.
- 11.2 The main points arising from the other letters are somewhat contradictory – three letters to the effect that that full road widening is needed to stop congestion getting worse and one that the main beneficiaries of full road widening would be the people and goods needing access to central London.
- 11.3 English Heritage wrote in January 2004 attaching copies of its earlier letters to WCC.^B Its main objection is to the height of the tower in both Option A and Option B and the resultant adverse impact upon the setting of neighbouring conservation areas and listed buildings and views from these conservation areas and the Royal Parks of central London.
- 11.4 The Westminster Play Association wrote to WCC^C indicating the difficulty the charity would face should development take place without adequate compensation being provided for its necessary removal from 147 Church Street.

^A Document G4.

^B Document G5.1.

^C Document G5.2.

12. CONDITIONS AND OBLIGATIONS

I held a discrete session on the suggested conditions on the penultimate day of the inquiry. I give here the gist of what was said then. The suggested conditions at Documents B19 and B20 were submitted after that session, modified in places. They are all but identical for the two schemes.

- 12.1 No comments were made by the parties in relation to suggested conditions 1, 9, 10, 12, 13, 14, 17, 18, 19, 20, 22, 27 and 28, save on the detail of their construction or phrasing.
- 12.2 On condition 2 (facing materials), the appellant suggested reflecting the likely phases of development, for example by referring to Buildings A, B, C, D and E, as identified on the application plans.^A The same comment was made in relation to conditions 3 (details of the development), 15 (details of disabled access), 16 (details of refuse storage). A not dissimilar comment, that the reference should be to the commencement of that part of the development, was made in relation to conditions 23 (supermarket ventilation system), 24 (service yard sound insulation) and 25 (service yard plant, turntable and doors).
- 12.3 Condition 4 (precluding use as holiday accommodation) has been simplified from the more complex draft originally submitted.
- 12.4 Condition 5 (supermarket opening hours) originally specified 0800-2000 hours Mondays to Fridays, 0800-1800 on Saturdays and 1000-1600 on Sundays. The appellant and I both queried the need to close the store as early as proposed on Mondays to Saturdays and whether the Sunday hours were simply repeating another legislative requirement. The hours have been modified to 0800-2200 on any day.
- 12.5 On condition 6 (car park opening hours), the word 'customer' would be incorrect if the car park was accepted as serving also the District Centre. The suggested hours have been modified to correspond with the appellant's suggestion of 15 minutes before and 30 minutes after the supermarket opening hours.
- 12.6 On condition 7 (use of the two shop units), restriction to Classes A1 and A2 corresponds with the applications and also with UDP policy seeking to control A3 use.
- 12.7 On condition 8 (affordable housing), WCC is responding to advice that, if a matter can be satisfactorily controlled by condition, then that is preferable to an obligation. Even so, the obligations contain provisions related to affordable housing. Similarly, parking for the Westminster Play Association is referred to in the obligations as well as in condition 11.
- 12.8 On condition 15, WCC makes the point that the way in which disabled access provision is made could have a harmful effect on the design or appearance of the development.
- 12.9 On condition 16, the waste strategy is explained in the application plans but further details of waste storage will be necessary.
- 12.10 On condition 21, while a contribution to public art might be secured through an obligation, the purpose of the suggested condition is to secure provision within the appeal site, as part of the development.
- 12.11 In relation to condition 26, there is on-going discussion with the Metropolitan Police about its telecommunications systems at Paddington Green Police Station. The suggested condition might be qualified by the phrase 'without prior written consent'.

^A Documents G6.1 and G7.1 – drawings 0203[15.1]P120A and 0203[15.1]P220A respectively.

Executed Section 106 obligations (unilateral undertakings) for Option A and Option B were submitted on the final day of the inquiry. They are all but identical. I have listed them as Documents A53 and A54. First drafts (Documents A22 and A23) were submitted during the opening week of the inquiry and amended drafts (Documents A51 and A52) before resumption in September. I set out here only the gist of the actual obligations and comments made by the parties not already reported above as part of their cases.

12.12 Put very simply, the obligations provide for the following.

- Road widening schemes (Clause 7) – funding implementation of the ‘Lesser Edgware Road Widening Works’ (the partial road widening scheme shown on the application plans); funding implementation of the ‘Edgware Road Widening Works’ (full widening between Newcastle Place and Church Street) subject to acquisition of 283 Edgware Road; best endeavours for a period of ten years to acquire 283 at twice market value or £1.25 million, whichever is the greater; failing acquisition of 283, to contribute the difference in cost between the two widening schemes towards enhancing public transport facilities in the vicinity of the appeal site.
- Affordable housing (Clause 8) – limitations on the occupation of the market housing in relation to the construction and management of the affordable housing (as defined in Clause 3.1); controls over the affordable key worker units.
- Contributions to the Social and Community Fund (Clause 9) – payment to WCC of the sum of £546,000 (or up to £750,000 if the Secretary of State so concludes), as defined in Clause 3.1, for the Social and Community Projects set out in the First Schedule.
- Paddington Green Police Station improvements (Clause 10) – payment of the sum of £365,000 to the Metropolitan Police for the provision of improvements it considers necessary to mitigate the adverse effects of the development on the Police Station.
- Car parking (Clause 11) – prior approval of car park tariff and management schemes.
- Management strategy for the holiday lets (Clause 12).
- Code of construction practice (Clause 13).
- Bus priority measures (Clause 14) – payment to TFL of the sum of £125,000 to be used for management and enforcement measures in the vicinity of the appeal site to improve bus journey times and reliability.

12.13 By virtue of Clause 1.2(b), the obligations in Clauses 7 (road widening schemes) and 9 (Social and Community Fund) are conditional not only on the appeals being allowed and planning permission granted but also on the decision containing a ‘clear statement ... that those planning obligations and any financial contributions referred to therein are appropriate’. That is argued by the appellant as enabling the Secretary of State, should he be persuaded more by WCC’s case than the appellant’s, to specify alternative and larger sums than those provided for in the clauses. In fact, the representations to the inquiry related only to the opportunity to adjust the sums payable under Clause 9.

12.14 Sainsbury’s criticises the absence of certainty given by the obligations to the acquisition of 283 Edgware Road (which it considers essential to the proper development of the site).^A The appellant’s view is that, whatever Mr Dean’s aspirations, twice market value or £1.25 million represents a generous offer because, if the appeals are allowed and the obligations come into play, any ransom element in the valuation of the property will then disappear.

^A Document E14, Section 3, contains Sainsbury’s views relating to 283 Edgware Road. The appellant responded with Document A56, in which para. 4.3.5 addresses the meaning of the terms ‘market rent’ and ‘market value’ with and without the prefix ‘open’.

13. CONCLUSIONS

In these Conclusions, footnotes are used to refer both to earlier paragraphs of this report and also directly to Inquiry Documents, where that would be helpful. Individual references to earlier paragraphs may also appear in superscript within the text.

Introduction

13.1 The conservation area consent appeals are straightforward. The planning appeals, on the other hand, raise a number of important considerations, some of them with more than one strand of argument because the objections by Sainsbury's Supermarkets Limited (Sainsbury's) on some topics were on a different basis to those of Westminster City Council (WCC) and/or Transport for London (TfL). In my opinion, and separating the different strands of argument wherever possible, the main considerations are these.

- a) Is there an objection to granting conservation area consent?
- b) Does the resolution to grant planning permission on Option C create a fallback position on which the appellant can rely?
- c) What weight should be given to the Sainsbury's application?
- d) Is including 283 Edgware Road^A necessary to a visually successful redevelopment of the appeal site?
- e) Is including 283 Edgware Road necessary to an acceptable road widening scheme along the frontage of the appeal site?
- f) Will the footway in front of 283 Edgware Road be wide enough?
- g) Is it necessary to constrain redevelopment to the safeguarding line in the adopted and emerging UDPs?
- h) What are the prospects for 6-lane road widening north of the appeal site?
- i) What scope is there for variation in lane widths?
- j) Would 6-lane widening adversely affect the character of the District Centre?
- k) Is PARAMICS modelling preferable to TRANSYT modelling?
- l) Does the TRANSYT model take proper account of potential future traffic?
- m) Should the supermarket car park be treated as serving the District Centre as well?
- n) Under what circumstances would a south-bound right-turn signal phase be necessary at the junction of Edgware Road and Church Street?
- o) What would be the effects on bus journey times of the various road widening and traffic signal scenarios?
- p) Would a 22-storey tower be acceptable but a 26-storey tower unacceptable?
- q) Would Building E2 be acceptable at six storeys high but not at seven storeys?
- r) Does Building E1 respect the settings of the adjacent listed buildings and the character and appearance of the conservation area?
- s) Is the overall design concept appropriate to its context?
- t) What would be the effect on the daylight reaching existing residential properties?
- u) What effects of the proposed development would it be appropriate to address by way of section 106 obligations, and to what extent?
- v) What conditions would be appropriate were the appeals to be allowed and planning permission granted?

^A All references to 283 Edgware Road should be taken to include 5 Newcastle Place.

a) Conservation Area Consent

13.2 There is no objection to the demolition of the unlisted buildings in the Paddington Green Conservation Area based on the architectural or historic merit of those buildings or their contribution to the character and appearance of the conservation area. The concern is simply that demolition would not be followed immediately by redevelopment.^A That can be overcome by granting conservation area consent subject to a condition in accordance with section 17(3) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (that the buildings shall not be demolished before a contract for the carrying out of works of redevelopment of the site has been made and planning permission has been granted for the redevelopment for which the contract provides).

b) The relevance of Option C^B

13.3 It is as well to set out here, before addressing any of the individual considerations, what influence I believe Option C might have in assessing the merits of Options A and B.

13.4 Option C^{A,1} differs from Options A and B in that it respects the UDP safeguarding line on Edgware Road and provides a foodstore car park of 180 instead of 223 spaces. It differs from Option B in that the proposed tower would be 22 storeys high (as in Option A). It cannot be a fallback in the normally accepted sense – because planning permission has yet to be granted. WCC has resolved to grant permission subject to satisfactory completion of a section 106 obligation.^{1,2} Negotiations have been proceeding but had not reached any conclusion at the close of the inquiry.

13.5 Nevertheless, the resolution confirms WCC's position on certain aspects of the Option A and B proposals. WCC considers the following acceptable – development excluding 283 Edgware Road; the limited road widening possible while 283 remains; the absence of a separate south-bound right-turn stage at the Church Street junction to serve a 180-space car park; a 22-storey tower; Building E1; Building E2 in Option A; the impact on daylight and sunlight to existing dwellings; and the overall design approach.

13.6 Planning permission, if granted, is likely to be challenged by Sainsbury's, which has already indicated its grounds for such a challenge. Its concerns may, of course, come to be resolved, in the section 106 obligation and/or because the proposals are put back to the Committee for reconsideration. I see no need to speculate on that. Put simply, the prospect of a challenge confirms that no more importance attaches to Option C than is claimed by the appellant – that it does not provide a recognised fallback position but does lend weight to certain aspects of the proposals as a result of WCC's support.

c) The relevance of Sainsbury's application^C

13.7 Similarly, the significance of the Sainsbury's application is better set out early. It is not relevant in the sense that the decision to be made does not involve a choice between that scheme and either of the appeals schemes. The appeals must be decided on their merits. If either is acceptable on its own merits, then a comparison with the Sainsbury's scheme is unnecessary. However, if there are concerns that aspects of the appeals schemes are not to the standards one ought to expect, then I consider that the Sainsbury's application could be helpful if it showed that a different and better solution were possible.

^A Document CD22 – in para. 2 of the Recommendation (on p.68), the Committee is asked to agree that conservation area consent 'would have been refused on prematurity grounds'.

^B See paras. 8.45-52 (Sainsbury's) and 9.11-15 (the appellant).

^C See paras. 8.25-26, 39-43 (Sainsbury's) and 9.106-107, 111-117 and 123 (the appellant).

d) **The need to include 283 Edgware Road for visual reasons^A**

- 13.8 I am in no doubt that, if either Option A or Option B were built as proposed, with 283 left standing, it would look as if the development was somehow unfinished – the buildings would be complete but the surroundings would appear not to be. 283 would be an obvious remnant of an older terrace standing cheek by jowl with a substantial piece of modern architecture – indeed, with the Paddington Green Police Station to its south, standing between and projecting forward of *two* pieces of modern architecture. Its presence would raise the obvious question – ‘Why was it not demolished?’
- 13.9 While I accept the principle that site constraints may prompt interesting or attractive architectural solutions, I do not accept that 283 represents a typical example of such a ‘quirk’ or ‘aggravation’.^{9,109} It may be that a high quality design for the site does not require 283 – but that design would still be seen with 283 beside or in front of it as an unexplained leftover from a previous time.
- 13.10 Nor am I convinced that there is ample space for pedestrians between 283 and the proposed development. The drawing I asked for at the inquiry^B shows just 4.38m between the rear corner of 283 and the base of the tower (the gap above, important to the perception of space, would be less than 2.5m) and indicates the narrowness of the footway along the front of 283 (which I consider further below).
- 13.11 The treatment of the exposed (north-facing) flank wall would be critical – simply to make the best of what was there. I do not think it possible to integrate 283 effectively into the development. Similarly, the illustrated use of 283 as a café or bistro would simply make the best of what was there rather than solve an urban design problem.^C And no other use suggests itself as likely to bring a better urban design solution.
- 13.12 Accordingly, I consider that retaining 283 would diminish the redevelopment proposal by its incongruity, whatever its use, by screening the supermarket entrance from the south, by constraining space about the base of the tower and, as a consequence, by leaving the shops in base of tower somewhat removed from main face of development.
- 13.13 But – and it is an important ‘but’ – would 283 remain indefinitely? I think very probably not. Its potential ransom value would disappear if planning permission were granted on Option A or B (likewise on Option C). The section 106 obligations with Options A and B seem to me to offer attractive terms if no ransom value exists. There must, therefore, be at least a reasonable likelihood of a sale. If 283 were demolished and the area left open, that would give a potentially attractive open space at the southern edge of development. If it were replaced with new building,^D there would at least be the opportunity to provide more space around the base of tower as well as integrating the design of the new building with the character of the development.
- 13.14 In my opinion, were there no other objections to the redevelopment proposals, it would be possible to tolerate 283 remaining on the basis that a reasonable likelihood exists of it being acquired and demolished within the foreseeable future (the section 106 obligations covenant the owner to use best endeavours continuously for a period of ten years).

^A See paras. 6.3 and 6.14 (WCC), 8.27-31 (Sainsbury’s), 9.108-110, 127-128 and 136 (the appellant) and 10.8-10 (M Dean).

^B Document A48.

^C Document A37 p.16 shows the view with the suggested water cascade on the flank wall; pp.16A/16B show 283 as a café or bistro; p.18 shows the view east from Newcastle Place.

^D Document A37, p.17.

e) The need to include 283 Edgware Road for highways reasons^A

- 13.15 I believe that the retention of 283 would appear equally peculiar in highways terms. The partial widening that would be possible would see the highway reduced to four lanes past 283 from six (existing) to its south and five (proposed) to its north. North-bound traffic would still have to deviate around 283, as it does at present but exaggerated by the new angle of the road along the appeal site frontage; the effect for south-bound traffic would be that the two general traffic lanes south of the Church Street junction would merge quickly back into a single lane past 283 before widening again to two.
- 13.16 Again, I am certain that the question to arise would be why 283 was not included in the development and demolished. As I say above, however, I consider that there would be a reasonable prospect of 283 becoming available if planning permission were granted on either appeal scheme. If it were acquired, as provided for in the section 106 obligations, 5-lane widening along whole frontage would become possible. In fact, neither TfL nor WCC objects to that proposed partial widening, looked at purely on its own terms – but the removal of 283 would enable a better scheme by enabling five lanes along the frontage of the appeal site without deviation or narrowing.
- 13.17 As above, I consider that, in the absence of other objections to the redevelopment proposals, the continued existence of 283 could be tolerated because of the likelihood that it would be acquired and demolished within the foreseeable future.

f) The footway in front of 283 Edgware Road^B

- 13.18 The Level of Service (LOS) calculations appear to support the appellant's argument that the footway width would be comfortable for the predicted Saturday peak use. However, I have reservations about applying the formula to a footway with so narrow an effective width. The appellant's calculation for a footway with an effective width of 0.5m may appear logical but, in simple terms, such a narrow width would not enable people walking in opposite directions to pass each other comfortably. While WCC may be right to advise common sense on that point, I think it exaggerates when it envisages people arriving in 'platoons' from the bus stop. One must consider both how many (or few) people would alight from any one bus and also that they would probably walk at different speeds, thus not necessarily reaching the pinch point at 283 in a 'platoon'.
- 13.19 In any event, it again seems to me that the issue must be looked at in the context of how long 283 might be likely to remain. The footway would be very little different to what it is now – though the advent of the development would mean many more pedestrians using it. In my opinion, the constraints on pedestrian movement would likely be temporary, given what I consider the reasonable likelihood of 283 becoming available. Also, my scepticism about the LOS calculations notwithstanding, the predicted average number of pedestrian movements is not unduly high. Accordingly, I do not consider this objection a compelling one.

g) The safeguarding line for road widening in the adopted and emerging UDPs^C

- 13.20 TfL objects to the proposals on two grounds, one being the failure to set development back to the safeguarding line for road widening indicated in the UDP. The reason for the

^A See paras. 6.3-4 (WCC), 8.3 (Sainsbury's), 9.18-21 (the appellant) and 10.8-10 (M Dean).

^B See paras. 6.52-54 (WCC), 9.74-75 (the appellant) and 10.3 (PRACT).

^C See paras. 6.3-4 and 45-47 (WCC), 7.19, 21-23 and 28 (TfL), 8.3-5 and 10-14 (Sainsbury's), 9.16-21 (the appellant) and 10.2 (PRACT).

objection is that failure to do so would prejudice the effectiveness of any proposals for widening over a greater length of the Edgware Road corridor (north to St John's Wood Road). TfL does not object to the proposals for either partial widening (with 283 remaining) or full 5-lane widening along the frontage of the appeal site (283 having been removed). It sees no need for more extensive measures – either to accommodate traffic generated by the development or to mitigate the impact on bus journey times.

13.21 TfL objected to the safeguarding line in the Replacement UDP on the basis that a widening scheme was no longer included in its work programme. In his inquiry report, the Inspector appears to accept the safeguarding line as indicating 'the land needed for purely local improvement'.^A WCC describes that 'local improvement' as removing a pinch point that affects the flow of buses.^B But, like TfL, it raises no objection to the appeal proposals on the basis of the traffic generated by the development or the effect of that on bus journey times.

13.22 Contrary to the appellant's view,⁹¹⁷ my conclusion is that the safeguarding line must be seen as seeking to secure a local road improvement that would be made possible by the expected development but not necessarily required as a direct result of that development. The appellant notes the agreement of TfL and WCC⁹¹⁸ that the proposed partial widening would accommodate traffic generated by the development – and that appears to be confirmed by the resolution to grant planning permission on Option C, which, with 283 remaining, has virtually the same partial widening proposals as Options A and B.

13.23 WCC and TfL may thus be seen as pursuing similar, or at least complementary objectives. The former sees widening along the appeal site frontage as an improvement in itself. The latter does not, but sees protection of the safeguarding line as important to more wide-ranging improvements along Edgware Road.

13.24 Sainsbury's view, put simply, is that the appeal proposals would have an adverse effect on traffic conditions which could only be mitigated by full widening, including the removal of 283, to provide a continuous north-bound bus lane.

13.25 Whether the safeguarding line represents a necessary building line to mitigate the effects of the proposed development is clearly one consideration. But I conclude that it is not the only one. The potential benefits that maintaining it could provide for bus travel along the Edgware Road corridor must be a second and independent consideration – which I now go on to consider.

h) The prospects for 6-lane road widening to the north of the appeal site^C

13.26 There was no suggestion before January 2004 that 6-lane widening of Edgware Road between Harrow Road and St John's Wood Road might be a consideration. The indicative scheme put to the inquiry^D is simply that.

13.27 There has been no consultation. There is no resolution to proceed with preparation of a widening scheme, or with the compulsory purchase of property that would seem inevitable. There are no proposals in the London Plan or in the London Transport

^A Document B13 – Appendix 3, p.32 at (b)(ii) summarises TfL's objection; para. 4.18.2 on p.35 gives the Inspector's reasoning.

^B Document CD35 – in fact, para. 4.133 (p.233) of the supporting text to Policy TRANS 18 in the emerging UDP refers to 'congestion for both private and public transport, on what is a major bus route'.

^C See paras. 7.21-28 (TfL) and 9.57-73 (the appellant)

^D Document D5 – drawings nos. 79422/OS/102/B, 103C and 104B show, respectively, a preliminary arrangement from Harrow Road to Church Street, to Blomfield Road (Maida Avenue) and to St John's Wood Road.

Strategy. There has been no assessment of likely costs. There has been no assessment of proposals against the policies of the London Plan. (In this respect, Policy 3C.15^A sets stringent criteria relating to economic regeneration and development, net traffic capacity, environmental benefit, safety, conditions for various road users, and local and strategic land use policies; TfL's view that the proposal would be in accordance with this Policy seems to me to relate to just one aspect of one criterion out of six.) There has been no assessment against the objectives set out in the Transport Strategy for London. And there has been no assessment against the policies of the UDP. The process of studying the options, preparing a business case and an environmental assessment, gaining Board approval (if a scheme were thought practical and viable) and then consulting widely was thought likely to take around two years. In my opinion, it could well take longer.

- 13.28 Also, and I think critically (given the property acquisition apparently required by the indicative scheme and the potential cost and disruption of that), there has been no consideration of the comparative benefits that might be achieved by a more modest form of intervention, or even by more effective enforcement in the existing situation. If, as the appellant contends, equivalent savings in bus journey times might be achieved by better enforcement, then it is extremely difficult to imagine a full 6-lane widening scheme being brought forward.
- 13.29 In short, I agree with the appellant that the possibility of a 6-lane widening scheme coming forward must be considered remote. I acknowledge the importance of, and the priority to be given to, improving bus journey times and encouraging greater use of buses. Even so, it is difficult to see how the indicative scheme before the inquiry could survive a rigorous assessment, particularly a cost-benefit analysis.
- i) Lane widths^B
- 13.30 The above considerations prompt another question – whether 6-lane widening between Newcastle Place and Church Street could be achieved with the building line proposed for Options A and B. The lane widths that would be possible would be less than the standard normally sought. TfL criticises the fact the bus lanes would be just 3.0m wide compared to its minimum standard of 3.5m, saying that that would jeopardise road safety, particularly for cyclists (who would use the bus lanes). WCC makes the same point. TfL also criticises the reduced footway widths.
- 13.31 I support those criticisms. There is the option here to set development back to a building line that would enable appropriate and acceptable lane and footway widths. That may not be so further to the north. TfL's objective of full 6-lane widening might (in my opinion, very probably would) be prevented by the cost of acquiring the property needed to make that possible. In those circumstances, narrower lane widths may be seen as acceptable if they would nevertheless enable an overall improvement of the highway and its performance. I therefore see no inconsistency between seeking normal standards along the appeal site frontage and perhaps having to take a more pragmatic approach to widening further to the north.

^A Document CD3, p.120.

^B See paras. 6.49 (WCC), 7.28 (TfL) and 9.71-72 (the appellant).

j) **The effect of widening on the character of the District Centre^A**

13.32 The appellant also argues that 6-lane widening would harm the Church Street District Centre by appearing to separate one side of Edgware Road from the other.^B

13.33 I visited Edgware Road south of Harrow Road and also Finchley Road at Swiss Cottage in the course of the inquiry. Edgware Road south of Harrow Road generally has only four lanes and gives the impression of a busy and vibrant city street, albeit one that demands great care in its crossing. Finchley Road has six lanes, less sense of visual enclosure and is generally impossible to cross other than at the light-controlled crossings. I did not detect any greater sense of the separation of the two sides of Finchley Road than at Edgware Road, though I did gain the impression that, commercially at least, the west side of Finchley Road was seen as more attractive than the east.

13.34 I do not believe that 6-lane widening between Harrow Road and Church Street would cause any harmful polarisation or demarcation. The two main attractions, the foodstore and the Church Street market, would be on opposite sides of the road. It would be possible to cross the road not only at Harrow Road and Church Street but also in between, at the Broadley Street crossing. It and Church Street are marginally more than 100m apart, which I do not consider excessive. I cannot speculate on the effect if Edgware Road were widened to six lanes as far as St John's Wood Road. It would be a very long stretch of 6-lane road - but the effect of property acquisition and alteration or redevelopment is impossible to judge.

13.35 Accordingly, while I am sympathetic to the fear underlying the argument, I see no grounds for resisting 6-lane widening on the basis of any harmful social or commercial separation that it might cause.

k) **PARAMICS and TRANSYT modelling^C**

13.36 TRANSYT is TfL's modelling tool of choice. It has published guidance on micro-simulation modelling which highlights the potential difficulties that could arise in that.^D TfL disagrees with Sainsbury's, simply stating that its own analysis does not justify road widening limited only to the frontage of the appeal site (and 283). Sainsbury's thought PARAMICS a more appropriate tool and presented simulations to the inquiry.^E In closing, however, it conceded that PARAMICS did not model the existing situation very well (while still believing that it did a better job than TRANSYT). The appellant severely criticised the PARAMICS modelling.^{9,29,34}

13.37 Having viewed the three PARAMICS simulations, I had reservations, which I expressed to the inquiry at the time, about the relative quantities of traffic both north-bound and south-bound on Edgware Road, how traffic negotiating the narrowed carriageway at 283 was modelled, the failure to model obstructions occurring at Frampton Street and beyond and about how traffic exiting from Church Street was modelled. The appellant's highways consultant had the expertise and the opportunity (albeit hurried) to analyse the models much more thoroughly. To a large extent, his conclusions^{9,29} confirm, echo or

^A See paras. 6.50-51 (WCC), 9.67 (the appellant), 10.6 (St Marylebone Society) and 10.7 (Hall Park Residents' Association).

^B The matter is dealt with in Document A1 at paras. 7.40-44 (pp.85/6)

^C See paras. 7.20 (TfL), 8.15-20 (Sainsbury's) and 9.24-56 (the appellant).

^D Document D7.

^E Document E23.

explain the impressions I formed. In my opinion, the conclusions of the PARAMICS modelling can reasonably be disregarded.

- 13.38 One of the potential problems with TRANSYT is that it stacks queues vertically. In other words, it does not model the extent to which a queue back from one junction might affect the operation of the preceding junction. That falls to the operator of the programme.^{9.43} It is clear from the evidence, however, that both the appellant and TfL are well aware of how Edgware Road functions in practice and I have no reason to think that potential 'blocking back' has not been satisfactorily accounted for. Node 103 was introduced into the model precisely in recognition of the bottleneck north of the Church Street junction. It was described as simulating the delay caused by a moving queue of traffic rather than a stationary one^{9.44} – but it happened quite often when I visited the site (though much more in mid-afternoon than in the evening peak) that the queue was a stationary one and did tail back into the Church Street junction. Even so, the very introduction of node 103 gives me greater confidence in the results to be drawn from the TRANSYT models being used.
- 13.39 The point is made that the traffic generation inputs to the TRANSYT model are very robust indeed.^{9.49} That may be. However, the express purpose of building robustness into the model is to suggest how the proposals would accommodate the worst conditions that might be likely.
- 13.40 I take the view that the TRANSYT analysis is certainly preferable to PARAMICS and that, while Sainsbury's concerns may understandably have led it towards PARAMICS, the robustness of the inputs to TRANSYT allows confidence in the outputs.

l) Potential future traffic^A

- 13.41 There is no evidence that the proposed extension to the Congestion Charging Zone, if it were implemented, would cause an increase in traffic on Edgware Road north of Harrow Road. Traffic flows have reduced since the introduction of the original congestion charging scheme. Edgware Road south of Harrow Road marks the western boundary of the existing charging zone and would be a free route through the extended zone. But there are no obvious existing north-south routes from which traffic might divert to Edgware Road north of Harrow Road in the event that the zone was extended. TfL does not believe that traffic flows in the vicinity of the appeal site would change significantly.
- 13.42 There is also no evidence that traffic associated with the Heathrow Express terminus at Paddington would have any significant impact on Edgware Road north of Harrow Road. TfL does not include this as a source of traffic in its own modelling. In similar vein, I do not consider that temporary access to Paddington caused by the construction of Crossrail would cause any significant increase in traffic in the vicinity of the appeal site.

m) The supermarket car park and the District Centre^B

- 13.43 The appeal site has a Public Transport Accessibility Level (PTAL) of 6 – the highest possible. The standards in the London Plan indicate parking provision in the range 130-199 for a foodstore of the size proposed in a location with a PTAL of 6.^C Options A and B would both have 223 spaces in a car park that is proposed for use in connection with

^A See paras. 9.35-39 (the appellant) and 10.4 (PRACT); see also Document B12, paras. 3.6-7 (WCC) and Document E/JF/1, paras. 2.9-11 (Sainsbury's); neither WCC nor Sainsbury's raised the matter in closing.

^B See paras. 7.4-8 (TfL) and 9.76-78 (the appellant).

^C Document CD32 – derived from Table A4.3 in Annex 4 (p.A23).

the District Centre and not solely for customers of the foodstore. TfL recommends a car park no greater than 180 spaces on the basis that that is not only within the permissible range but would also obviate the need for a south-bound right-turn signal phase at the Church Street junction. Option C proposes a car park of 180 spaces.

13.44 The appellant assesses existing parking provision for the District Centre at one space for every 96sqm of floorspace. The London Plan recommends a maximum of one space for every 50-75sqm.^A The proposed 223 spaces would replace the existing 78 spaces in the temporary car park on the appeal site, a net gain of 145 spaces. District Centre provision would thus increase to one space for every 79sqm, still slightly lower than the standard in the London Plan. Accordingly, there is no direct policy basis for resisting a car park of 223 spaces. That said, it might be possible to make a case for restricting parking on the appeal site in order to avoid a right-turn stage at the Church Street junction if, in turn, that would avoid a harmful increase in north-bound bus journey times.

n) **The need for a south-bound right-turn signal phase at Church Street^B**

13.45 TfL argues that traffic turning right into Church Street from the north on Edgware Road would need a separate right-turn signal phase if the number of passenger car units (pcus) would exceed 115/hour. It agrees the proposition that the number of car trips generated by a proposal is a function of the number of parking spaces provided. And it considers a car park of 180 spaces consistent with limiting right-turn movements to 115. The appellant argues that modelling constrained by a 223-space car park shows too few movements to require a separate right-turn stage (TfL's model was unconstrained) and that, even in the unconstrained model, right-turning traffic could be accommodated within the geometry of the junction.

13.46 Appendix G^C to the Review of the West End Green Development Proposals by Colin Buchanan and Partners (CBP) sets out trip rates and parking accumulations. Part of the appellant's reasoning on why a 223-space car park would not require a right-turn stage is that allowance should be made in the accumulation for cars already in the car park at 0800 hours. Appendix G does not do this. A figure of 35 is argued for, giving a maximum accumulation of 201 in the evening peak hour.^D That figure, as TfL notes, is based on anecdotal evidence, is much greater than the 20 cars surveyed at the Camden store in 1991 and anyway relates to a larger store than is proposed here. In my opinion, there is no basis for accepting the figure of 35 and the conclusions that may be derived from its use. Taking a figure of 16, which TfL says is the equivalent for the proposed store of the 20 surveyed at Camden in 1991, would suggest that a car park of up to 202 spaces could be acceptable.^E

13.47 The other strand to the argument is that, even in the unconstrained scenario, a 223-space car park would generate no more than four right-turning vehicles per cycle, a number that could be contained in advance of the stop line and would be likely to clear the

^A Document CD32 - also in Table A4.3.

^B See paras. 7.9-17 (TfL), 8.10 (Sainsbury's) and 9.47-52 (the appellant).

^C In Document CD55.2 and reproduced separately as Document A27 - referred to specifically in TfL's case at para. 7.13.

^D The very right-hand column in Appendix G has an accumulation of 166 at 1800-1900 hours; adding 35 to this column for cars already parked at 0800 hours gives 201, which is the notional capacity of a 223-space car park with a 10% allowance (22) for circulation. It may be noted that TfL seemed cautious about this allowance in resisting the appellant's arguments (in para. 7.16) but was content to allow it in calculating that a 180-space car park would not need a separate right-turn phase.

^E $202 - 10\% (20) = 182 - 166 \text{ accumulation at } 1800-1900 + 16 \text{ assumed to be parked before } 0800.$

junction during the inter-green period. There must be some doubts about the practical application of that proposition, even though it was agreed by TfL. Scaling from drawing no. 3158809/B/1/H,^A there is an absolute maximum of 17.0m available in advance of the stop line in which right-turning traffic could safely queue without impeding north-bound traffic. Even if the first three cars in a queue were making full use of the available road space, that would allow a fourth vehicle to do no more than straddle the stop line.^B

13.48 Though not points taken at the inquiry, I think it is reasonable to bear in mind also the propensity of people to queue for a car park even though it is displaying a 'full' sign, there are already cars queuing and the likely length of the wait is unknown. Whether there were 180 or 223 spaces, the proposition that the number of trips generated will be a function of the number of parking spaces available must be influenced by whether customers already know that the car park is likely to be particularly busy at certain times, whether they have the flexibility to shop at different times and whether they are on the road anyway and thus not inclined to make a separate shopping trip at a different time.

13.49 The appellant refers to the robustness of the inputs on traffic generation. I am content that that allows for those things that it is difficult, if not impossible, to model – for example, drivers who do not make effective use of the road space for right-turning traffic or people who would choose to, or would be obliged to, visit the foodstore at times when they knew that the car park might be at its busiest. Average trip rates could be expected to be lower than those used but I consider that the resulting robustness of the inputs may be taken as giving a margin for error to accommodate non-average occurrences.

13.50 Accordingly, I accept TfL's assessment that a separate right-turn phase would be needed if the proposed car park had more than 180 spaces. This conclusion is subject only to whether the capacity might be increased by a reasonable allowance for cars in the car park before 0800. I think it unnecessary, and perhaps undesirable, to take a firm view on that at this stage. Excavation for the separate residents' car park in the lower basement level would automatically mean that the space for a 223-space shoppers' car park would be available above it – so it would seem to be a question of simply blocking off part of that area to limit car parking numbers. That would offer the opportunity, in the event of the development proceeding, to monitor what actually happened before deciding whether the number of spaces might be increased without detriment to the flow of traffic on Edgware Road.

o) The effects of different widening and signalling scenarios on bus running times^C

13.51 It is the impact on north-bound bus journey times that is the critical consideration. The effects of five different scenarios have to be considered against the existing situation – the partial widening enabled by the development proposals but with 283 Edgware Road remaining; the 5-lane widening between Newcastle Place and Church Street that would follow if and when 283 was acquired and removed; the 6-lane widening that could take place between Newcastle Place and Church Street if development were kept back to the safeguarding line in the UDP; and full 6-lane widening from Harrow Road to Maida Avenue and to St John's Wood Road.

^A Document A39.

^B In Document A8.1, the photographs at Figure ML-15 show the existing junction in operation, suggesting that four vehicles could not queue in advance of the stop line; it is not an accurate guide, however, as the geometry of the junction would be altered and would give more space within it for queuing traffic (as well as a third lane).

^C See paras. 7.20-7.22 (TfL), 8.8-12 (Sainsbury's) and 9.22-23, 30-33, 42, 47-48, 53-56, 69 and 72 (the appellant).

13.52 TfL did not dwell at length, or in detail, on bus journey times in closing.^A Nor did Sainsbury's. TfL emphasised its disagreement with Sainsbury's over the benefits (or lack of them) from widening only along the frontage of the appeal site. Sainsbury's relied on what it thought clear from observation (that a bus lane from Harrow Road to Church Street would significantly reduce delays for buses at times when there is queuing back). The appellant responded in closing to the evidence adduced by both during the inquiry. I shall try to make the following paragraphs as self-contained as possible by making specific reference to the data and evidence from the inquiry documents in addition to the cases recorded above.

Existing signal cycle at Church Street

13.53 The present signal cycle at the Church Street junction is 88 seconds. Green time for north-bound traffic on Edgware Road is 43 seconds. For south-bound traffic, a lag of 5 seconds enables the right turn into Church Street. Green time for Church Street is 7 seconds. The pedestrian crossing phase is 10 seconds green plus 14 seconds inter-green, the latter determined by how long it would take from the end of the green phase for a pedestrian to cross the full width of the carriageway. These figures come from a document submitted fairly early in the inquiry.^B Very late in the inquiry, Sainsbury's submitted an amended table by Savell Bird & Axon (SBA), said to be agreed with Capita Symonds (for the appellant), showing a slightly longer green time for north-bound traffic on Edgware Road; the appellant submitted copies of e-mail correspondence to show that it was not agreed.^C I am satisfied with the explanation in that correspondence (that the 3 seconds difference is lag time which may or may not be given and is consistent with the operation of SCOOT), which allows me to base comparisons on the original figures.

Existing bus journey times

13.54 On the length of road between Harrow Road (Marylebone Road) and the Frampton Street pedestrian crossing, Sainsbury's (SBA's) observations in June 2004 suggested an average journey time of 181 seconds compared with TfL's (CBP's) modelled time of 120 seconds.^D The appellant points out, however, that 120 seconds is the modelled running time, to which must be added the average stopping time of 49 seconds. On that basis, the comparison is between 181 and 169, a difference of just 7%.^E In fact (and it may simply be a slip by the appellant), CBP gives the modelled running time as 112 seconds in the evening peak.^F That might be thought to make the difference more significant. However, CBP compares modelled and measured times over the longer distance between Marble Arch and St John's Wood Road and finds them within 3%.^G I have no reason to think that, using this model as a base, the differences in running times between the existing situation and the widening scenarios would somehow be distorted.

Partial widening with 283 Edgware Road remaining

13.55 With a 223-space car park and a south-bound right-turn phase into Church Street, TfL estimates delays to north-bound buses, compared with existing running times, of 64 seconds in the morning peak and 29 seconds in the evening peak.^G Running times along

^A This does not imply criticism of the merit of TfL's case - I use TfL's (CBP's) figures in my assessment below.

^B Documents A31 (Column E), derived from Appendix C in Document CD55.2.

^C Documents E18 and A47.

^D Document E/JF/4, p.3 at para. 17.

^E Document D5, Table 6, drawn from Document CD55.2, Appendix D.

^F Document CD55.1, p.3-5 at Table 3 and paras.3.15-19.

^G Document D5, Table 11, drawn from Document CD55.1, Table 9, on p.4-15.

the whole of the Edgware Road corridor would show delays of 67 and 71 seconds respectively.^A The reason for the difference between 29 and 71 seconds in the evening peak is due to 'offset optimisation' in the TRANSYT model. The programme varies the offsets between the signalised junctions north of Harrow Road to minimise and spread the delays; this is also the purpose of the SCOOT system already operating, albeit in different way, to optimise traffic conditions.^B With a 180-space car park and no right-turn phase, the delays would be 49 and 22 seconds in the morning and evening peaks between Harrow Road and the Frampton Street crossing,^C 48 and 89 seconds along the whole of the corridor.^D It is a curious effect of the TRANSYT model that delays across the corridor as a whole could be greater without the right-turn phase at Church Street than with it. TfL (CBP) attributes this to the differing effects of over-saturation in each case and says that the way SCOOT operates could give different results in practice.^E

5-lane widening between Newcastle Place and Church Street with 283 removed

- 13.56 There would be very little difference in north-bound running times between partial widening with 283 remaining and 5-lane widening with 283 removed. This is because the number of north-bound lanes would remain the same even though the pinch point would be removed and the alignment improved. The real advantage lies in gaining three south-bound lanes continuously. In fact, delays between Harrow Road and the Frampton Street crossing would be slightly greater. That is because the Broadley Street crossing (kept as a single crossing, as TfL would prefer, rather than the staggered one shown on the plan^F) would be wider by nearly 6.0m, increasing the time pedestrians would need to cross and reducing the green time available to traffic.

6-lane widening between Newcastle Place and Church Street

- 13.57 TfL forecasts that 6-lane widening between Newcastle Place and Church Street, with a north-bound bus lane, would produce delays in the immediate vicinity exactly the same as for partial widening without a bus lane (49 and 22 seconds)^G and only marginally different over the whole corridor (50 and 92 seconds).^H This is because the time saved by having a bus lane would effectively be cancelled out by additional delay at the Church Street junction – the wider road necessitating a longer period for pedestrians to cross and thus leaving a shorter green time for north-bound traffic.^I
- 13.58 Sainsbury's disputed this but relied in closing on what it said could be observed rather than on modelling (by PARAMICS). At first glance, there appears to be some logic in Sainsbury's approach. There are periods (more often outside the evening peak hour) when what happens to the north of the Church Street junction affects how that junction operates. There are periods when the queues for the Church Street signals delay the progress of buses. If there were a bus lane, buses could move freely from the bus stops at Paddington Green Police Station through the Church Street junction to the bus stop to its north. They would then have to filter into the general traffic lane only when moving away from that more northerly bus stop. Progress could be impeded by left-turning

^A Document D5, Table 9, drawn from Document CD55.1, Table 7, on p.4-15.

^B Explained in paras. 4.4.8-11 on pp.4-11/12 of Document CD55.1.

^C Document D5, Table 13, drawn from Document CD55.1, Table 15.

^D Document CD55.1, Table 13 on p.4-22.

^E Explained in paras. 4.6.19-24 on p.4-23/24 of Document CD55.1.

^F Document A8.3 – drawings nos. 3T58809/B/1/C and 3T58809/B/2/B.

^G Document D5, Table 13, drawn from Document CD55.1, Table 20 on p.4-29.

^H Document CD55.1, – Table 18 on p.4-29.

^I Explained in para. 4.6.40 on p.4-30 of Document CD55.1.

traffic at the Church Street junction but there would be little incentive for north-bound traffic to move into the nearside lane at the signals when drivers can easily see that they would have to move out again a short distance further on.

- 13.59 Of course, TfL accepts that buses would move more quickly along this stretch of road at busier times if there were a bus lane. But it suggests that the gains would be limited by the short length of the lane and offset by the additional delays at the signals. Even if TfL were wrong in its modelling, however, the advantage of 6-lane widening with a bus lane would surely be limited to only a very few seconds – not enough, in my view, to be a compelling argument in favour of 6-lane widening over only this limited length of road.
- 13.60 No evidence was adduced for any of the 6-lane widening options (to Church Street, to Maida Avenue or to St John's Wood Road) on the effects with a 223-space car park and a separate south-bound right-turn stage.

6-lane widening from Harrow Road to Maida Avenue^A

- 13.61 If 6-lane widening were extended as far as Maida Avenue, north-bound evening peak bus running times would decrease by 100 seconds over the Edgware Road corridor compared with existing times and by 170 seconds compared with the partial widening of the appeals schemes. Between Harrow Road and the Frampton Street crossing, the decrease would be 41 seconds compared to existing times. Compared with partial widening, the decrease would be 63 seconds (though only 31 seconds if the Frampton Street crossing is taken to be called less regularly).

6-lane widening from Harrow Road to St John's Wood Road^B

- 13.62 Extending 6-lane widening as far as St John's Wood Road appears to offer slightly smaller benefits compared with widening to Maida Avenue – 88 seconds over the whole corridor compared with existing times, 166 seconds compared with partial widening, an increase of 10 seconds between Harrow Road and the Frampton Street crossing compared with existing times and a decrease of 12 seconds compared with partial widening (changing to an increase of 9 seconds with only partial calling of the crossing). TfL (CBP) puts the difference between the Maida Avenue and St John's Wood Road forecasts down to more successful optimisation of the former in the TRANSYT model.^C

Conclusions on bus journey times

- 13.63 There are four conclusions to be drawn.
- 13.64 The first is that traffic generated by the proposed development would clearly have an impact on traffic conditions on Edgware Road. That is shown by the increased running times, compared with existing times, for north-bound buses. However, it seems inevitable that any development of the appeal site involving major retail or commercial use would have some sort of adverse impact. Since the Edgware Road frontage is identified as a retail one in the UDP and since mixed-use redevelopment is very much to be encouraged, it is my opinion that the emphasis should be on mitigating any impact rather than preventing it.
- 13.65 The second is that delays resulting from a 180-space car park with no right-turn stage are not significantly different to those from a 223-space car park with a separate right-turn

^A Document CD55.1 Tables 29-34 on pp.5-12/13.

^B Document CD55.1 – Tables 22-27 on pp.5-6/7.

^C Explained in paras. 5.3.18/19, on p.5-14 of Document CD55.1.

stage. In fact, the delay between Harrow Road and the Frampton Street crossing would be less but that over the whole corridor would be more. Not only, therefore, is it questionable whether a right-turn stage is necessary for the predicted volumes of traffic, it is also questionable whether having one would be disadvantageous.

- 13.66 The third conclusion is that, on TfL's (CBP's) figures, 6-lane widening from Newcastle Place to Church Street offers no advantage for bus running times over the partial widening proposed in the appeals schemes. In light of this, I do not see how Sainsbury's evidence can support the argument that 6-lane widening with a north-bound bus lane along the site frontage is necessary to mitigate the effects of the development itself.
- 13.67 The fourth conclusion is that 6-lane widening to Maida Avenue or St John's Wood Road would enable significant reductions in north-bound bus running times compared with both existing times and modelled times with the proposed development and partial widening. A decision to maintain the safeguarding line so as not to prejudice achieving that benefit must, however, take into account the likelihood of such a scheme coming forward. It must also be set against the benefits that could flow from better enforcement of the existing loading and parking restrictions along Edgware Road. On its own, that could significantly reduce delays in the inter-peak period (said at present to be some 180 seconds greater than north bound morning peak delays, 30 seconds higher than evening peak delays^A). The modelled times are, of course, for the peak hours, when restrictions are tighter and my own observations^{1,21} confirm that traffic is less likely to be held up by infringements of them.

p) The visual impact of a 26-storey tower^B

13.68 WCC finds a 22-storey tower acceptable but a 26-storey tower too high. Officers might have originally preferred a tower of 16-20 storeys^C but members took the view that 22 storeys would be satisfactory, confirmed in the resolution to grant planning permission on Option C. The Mayor preferred the 26-storey proposal, both on design grounds and because it would achieve a higher residential density.^{9,97} CABE found an earlier 28-storey proposal potentially acceptable, though that may have been in the context of the then anticipated Grand Union (GU) Tower south of Harrow Road.^{6,13} English Heritage found both towers too tall.^{6,12} Local opinion is mixed.

13.69 In my opinion, the proposals can best be assessed by reference to the certified views and, in particular, to the PowerPoint presentation given by Mr Squire in his evidence in chief.^D There are, however, three matters that can be dealt with first.

The context for a tall building

13.70 There are a number of tall buildings in the area, north and south of Harrow Road and the Westway flyover. In my opinion, the flyover creates both a visual barrier and a boundary. Development to the south is generally taller, denser and more commercial in nature than development to the north. Edgware Road to the north of Harrow Road is evidently a secondary location compared with south of it. It is true that the distinction is

^A Para. 9.69, drawn from para. 6.1.3 on pp.35/36 in Document D5.

^B See paras. 6.11-13, 15-35 (WCC), 9.79-100 (the appellant), 10.5 (the St Marylebone Society), 10.14 (the Paddington Waterways and Maida Vale Society) and 11.3 (English Heritage).

^C Document CD11 Recommendation 2 accepts the principle of 'some form of high building between 16-20 storeys'; members accepted 22 storeys in principle; all WCC's evidence was on the basis that a 22-storey building was acceptable.

^D Documents G6.11 and G7.11 are the Certified Views Brochures, Document A44 the PowerPoint presentation.

not clear-cut. But the BT building in the north-east angle of the junction does not really impinge on the Edgware Road street scene and the Paddington Green Police Station, in the north-west angle, is somewhat diminutive compared with development to the south – because the tower has such a small plan form as well as a lesser height. Also, Hall and Braithwaite Towers and Parsons House are residential towers in a clearly residential context, different in character to the style of development south of Harrow Road. The disposition of all of these tall buildings will influence what may be considered appropriate on the appeal site but it would be wrong to argue that the scale and character of what exists (or might be built) to the south should act as the dominant influence.

The need for a gateway feature

- 13.71 The applicant argues that this is a gateway location and that the proposed tower (and better the 26-storey than the 22-storey tower) would form a gateway feature together with the proposed GU Tower to the south of Harrow Road. Edgware Road may well mark the point, travelling east, when one enters central London. But I disagree with the idea of a visual gateway. I do not believe that a tall building is necessary on the north side of Harrow Road to balance the GU Tower on the south side in order to provide a visual gateway.
- 13.72 In my opinion, the development in the Paddington Special Policy Area (PSPA) will, by virtue of its general height and density, act as a landmark on its own. The GU Tower, if built, would be the tallest building in the area and thus the visual focal point. Even if it is not built, PSPA policy expects the tallest building in the development to be on that site. People approaching from the west along the A40(M) will recognise from the development on their right hand side (in the PSPA) that they are about to enter central London. They will not need another tall building on their left hand side to confirm or enhance that point.
- 13.73 Nor is a gateway feature needed on Edgware Road. There is no visible tall building on the opposite side of the road with which to form a gateway. The junction with Harrow Road forms an effective visual gateway, at least from close to – because of the flyover (more a visual barrier than a gateway), because it is so obviously a major intersection and because, on reaching it, the scale of the buildings beyond becomes more obvious. I do not believe anything further is necessary as a visual signpost.

The GU Tower

- 13.74 The resolution to approve the GU Tower recognised the unique circumstances of the site and location. It does not act as any sort of precedent for a tall building on the opposite side of Harrow Road. Its site is specifically identified as the location for the tallest building in the PSPA. If it is not built, as now seems possible, one might reasonably expect a building of not dissimilar height (perhaps a little lower) to emerge in its place. But uncertainty about what may be built negates any argument about the merit of a specific visual relationship with the approved tower.

The Certified Views

- 13.75 Following Mr Squire's evidence to the inquiry, his PowerPoint presentation was amended so that, in views where the GU Tower would be visible (if built), Options A and B were shown both with and without the GU Tower. I comment below on what I

consider would be the impact of the two proposals, in the order of and with the assistance of the PowerPoint presentation.^A

- 13.76 In *View 1*, from the fringe of the Paddington Green Conservation Area, the trees within the Green obscure the detail of the buildings beyond. That is true whatever the actual viewpoint, at least until one gets closer to the eastern edge of the Green. In summer, from within the Green, the detail of the buildings is largely invisible above ground floor level (which can generally be seen below the tree canopies). The particular view excludes the development on the south side of Harrow Road, and indeed Harrow Road itself, both of which impinge significantly on the overall character of the area. In the view as shown, the slightly lesser height and mass of the 22-storey proposal seems to me preferable in the context of what else can be seen, in other words, specifically in the context of the Conservation Area. In the wider context, the difference between 22 and 26 storeys would be less significant, since Harrow Road and the buildings in the PSPA influence the overall character of the surroundings.
- 13.77 In *View 2*, WCC accepts that the higher tower would have no significantly greater impact than the lower one, a conclusion with which I agree.
- 13.78 Next in the PowerPoint presentation is an *unnumbered view*, from the north-east corner of the junction of Edgware Road and Church Street. So far as the proposed development itself is concerned, the 26-storey tower may relate slightly better to the scale and mass of the proposed buildings along Edgware Road. Whether or not there is any significant difference in how the two options relate to surrounding development is difficult to tell from the restricted angle of vision in the photographs. In my opinion, the taller tower might well be felt to dominate over its immediate surroundings.
- 13.79 *Views 8 and 9*, from further north along Edgware Road, tend to confirm that impression. In both, the 22-storey tower appears to stand more comfortably in its context than the 26-storey tower. Also, if the GU Tower is to have visual dominance, View 8 suggests that the 22-storey tower would relate better to it.
- 13.80 In *View 11*, from Little Venice, the taller tower would sit more comfortably in the left-to-right progression from Hall and Braithwaite Towers through the proposed building to the GU Tower. There is little to choose if the GU Tower is not built. What might favour a restriction to 22 storeys is the fact that, like Hall and Braithwaite Towers, the building would barely project above the summer skyline, when the trees are in leaf.
- 13.81 In *View 12*, from Hyde Park, I see nothing at all in favour of a restriction to 22 storeys. The proposed tower would fill a gap between existing nearer towers, rather than standing on its own. And, because its façade would be curved and composed mainly of glass, I think it would more likely be seen as lighter or more reflective than the existing towers, not darker as the images suggest.
- 13.82 In *Views 6 and 7B*, from within the Lisson Grove Conservation Area, the impact would be very much as I describe above in relation to Edgware Road. The 22-storey tower would be more appropriate in what ought to be a subordinate role to the GU Tower and would also, without the GU Tower, be less dominant in relation to the nearer and lower buildings above which it would be seen.
- 13.83 In *View 16*, from Regent's Park, I think the taller tower is to be preferred. It would stand more comfortably alongside the GU Tower and, if that were not built, there is something

^A Document A44.

more satisfactory about its positive projection above the skyline. In almost whatever direction one looks around the Park, buildings of various sizes and styles project above the treed skyline. Lower buildings quite close to the Park are often more prominent than taller ones further away. The distance of the appeal site from the Park is enough on its own to ensure that a tall building upon it would not appear unduly intrusive, let alone dominant. There might be something to be said for a building lower than 20 storeys, which could not be seen at all (as I believe English Heritage would prefer), but any policy principle about keeping distant buildings below the skyline seems to me to be rendered untenable by what exists or what has been approved.

Conclusion on the visual impact of the proposed tower

13.84 From Edgware Road and nearby, my conclusion is generally that the 26-storey Option B tower would be less successful than the 22-storey Option A tower. From further afield, however, that is not so. I am sure that this difference reflects, to an extent, the difficulty of conveying relative distance on a print or computer image – in other words, of reproducing in a two-dimensional format the human brain's ability to perceive from the detail that a nearer object is smaller than one further away, or subordinate to it, when the outline or silhouette might suggest that it is not. At the same time, my conclusions in most cases apply whether or not the GU Tower is included in the view.

13.85 The heights of the proposed and existing towers assist in resolving any uncertainty.^A To the top of the main parts of the buildings, the Hall and Braithwaite Towers are 63m high, Paddington Green Police Station is 57m high and the Hilton Hotel is 92m high. The GU Tower would be 120m to the top of the main building. Option A is 78m to the top of the main building, 83m to the top of the plant. Option B is 92m to the top of the main building, 97m to the top of the plant. In my opinion, in the absence of any visual or urban design need for a taller building (such as for a gateway feature), the tower on the appeal site should reflect more the general heights of the tall buildings north of Harrow Road and should not seek to match those to its south. Option B would be some way higher than its nearer neighbours and more or less the same height as the Hilton Hotel, on the south side of Harrow Road. I consider that inappropriate in urban design terms.

q) The visual impact of Building E2^B

13.86 If one looks at the Option B proposals in isolation, then the increase in height from the five storeys of Building E1 to the seven storeys of Building E2 does act as an appropriate progression towards the tower.^C If one looks at the illustrations from around Paddington Green,^D a different conclusion may be drawn.

13.87 In Certified View 2, the ability to see the top storey of Building E2 in Option B above and behind Building E1 creates the impression of a very dense form development, with E2 almost crowding in on E1. In fact, there would be about 9.5m between the buildings, which are roughly 23.5m and 17.0m high respectively. Even though one would see only the top storey of E2 from Paddington Green, above and behind E1 and nos. 14-18, it is my opinion that a similar impression would be gained – that, as well as being significantly taller than the existing buildings in the conservation area, E2 would appear

^A Document A17.

^B See paras. 6.36-43 (WCC) and 9.101-104 (the appellant).

^C Drawing no. 0203[15.2]P251A in Document G7.1; slide 71 in Document A44 is a coloured version.

^D Document A44 – in the PowerPoint presentation, slides nos. 6 and 7 show Options A and B in Certified View 2; slides nos. 77 and 78 show the two options in skeleton form from Paddington Green; slide 81 is an illustration from Paddington Green, reproducing Document A37A.

uncomfortably close behind them. I consider that would harm the character and appearance of the Conservation Area.

13.88 It is the combination of height, proximity and size (plan dimensions) relative to the Paddington Green buildings that I consider critical. The tower, whether Option A or Option B, would also rise behind the existing buildings but would be over 70m beyond the façade of no. 14 compared with the 17m of E2. In Option A, E2 would be no further away but, being one storey less, would be considerably less obvious in most views, invisible in some.

r) **Building E1 and the adjacent listed buildings and Conservation Area^A**

13.89 Criticism here is by Sainsbury's but not by WCC. E1 has been designed to appear as a pair of semi-detached buildings (with some form of vertical demarcation between the two halves) but the drawings^B do not give me confidence that the impression would be other than a single building. In that case, height and particularly frontage width would clearly be greater than any of the existing buildings, apart from Mary Adelaide House at the northern end of the group. Also, the building line would be well forward of all but Mary Adelaide House. I do not believe that a building at the southern end of the terrace to reflect that at the northern end (an equivalent 'bookend') is the right urban design solution. Even if it were, the proposed design fails completely, in my opinion, to reflect the scale, style and detail of the building it is seeking to echo. That is not a criticism of the architect. Mary Adelaide House pays scant respect to the other buildings in the terrace and is very much an architectural statement of its time. E1 is also architecture of its time – but I think it extremely difficult, indeed, perhaps not possible, to reflect the attributes of a building some 100 years old in a new building that seeks also to maintain the 'family style' of the larger development of which it forms part. In my opinion, the Conservation Area and the setting of the listed buildings deserve a more sensitive architectural composition on the site of Building E1.

13.90 The Sainsbury's application contains what I consider the basis for a more successful approach, albeit one that needs to be considered in more detail.^C The impression would be of two buildings, each with a frontage consistent with nos. 14-18. One would reflect the fenestration patterns of its older neighbours. The other would be a much more modern architectural expression. The building line would be stepped, the better to reflect the variations in the existing building line. And the fineness (potentially the finesse) of the detailing indicated for the topmost storey in each building could provide a modern counterpoint to the dormers and chimneys of Mary Adelaide House.

s) **The overall design concept^D**

13.91 Again, criticism on this is by Sainsbury's but not by WCC. I consider the matter purely on its merits, irrespective of whether Sainsbury's could or should have raised its concerns at an earlier stage in negotiations with the appellant.

13.92 The appellant's architect sets out the 'underlying concept of the massing of the scheme' as 'to reinforce the existing street pattern with consistent building heights on Edgware

^A See paras 8.37 (Sainsbury's) and 9.116 (the appellant).

^B Drawings 0203[15.1]242A, 243A, 244A, 245A and [15.2]252A in Document G7.1.

^C Drawings nos. 1889/(2)102B and 1889/(3)102A in Document E21.

^D See paras. 8.24-26 and 32-42 (Sainsbury's) and 9.105-107 and 111-117 (the appellant).

Road and Church Street, punctuated by the single tall slender element of the tower'.^A He does so by means of a series of 'mansion blocks', which he argues will relate well to the existing mansion blocks on Edgware Road and also, through the details of the design, both to the existing buildings opposite on Edgware Road and to Mary Adelaide House on the corner of Church Street and Paddington Green.

- 13.93 There is no objection to the principle of the tower. I have considered above the question of height. I have no other concerns about that element of the proposals and will not refer to it again. The mansion block concept would sit well with the tower but that should not necessarily outweigh wider urban design considerations.
- 13.94 There are mansion blocks on Edgware Road both to the south of Harrow Road and to the north of Maida Avenue. Those to the south appear as individual blocks rising out of a three-storey plinth. The gaps between them appear roughly as wide as the frontages of the individual blocks.^B Those to the north stand separately, sufficiently far apart for their return frontages to have windows in them.^C The mansion blocks of the appeals schemes would be closely linked. The three blocks facing Edgware Road would be less than 4.0m apart, linked by accommodation recessed by less than 2.0m and just one storey lower. In my opinion, the elevation to Edgware Road would read as a single façade subdivided into three rather than as three separate mansion blocks. The gaps to the tower to the south and the Church Street building to the north would be effectively full height but little or no wider; they would not alter the overall impression. I do not believe that, in fact, the proposed design would read as it is intended to – as a series of mansion blocks or pavilions.
- 13.95 In addition, I think it open to question whether the mansion block concept is appropriate for this particular site. Opposite and to the north are terraces with retail frontages. To the south is the Westway flyover, which provides strong visual separation from that part of Edgware Road beyond. Sheldon House, fronting Edgware Road and Church Street directly opposite the appeal site, is a modern residential development of four and eight storeys but neither element is in the mansion idiom.
- 13.96 The building facing Church Street (Building B) is not a mansion but what might be termed a slab block, seven storeys high and over 50m long, the elevation unrelieved by the device used to sub-divide the Edgware Road façade. It would be not far short of twice the height of the adjoining Church Street buildings (and marginally higher than the ridge of Mary Adelaide House) – and the style of the fenestration (effectively full-height through the upper floors and in elements about 6.0m wide) would not relate at all well to the rhythm and scale of the older buildings. I think the mass and bulk of Building C would overpower the older buildings alongside, which fall within the Paddington Green Conservation Area. It can be argued that the proposed building would face the eight-storey block of Sheldon House and should relate to it – but that building is set back over 30m from Church Street. Moreover, the modern development of Sheldon House and the Hall and Braithwaite Towers should not, in my opinion, be a greater influence than the more traditional pattern of building along Edgware Road and on the south side of Church Street, with which the proposed development would be more closely related – and with which its mass and scale would be rather at odds.

^A See para. 9.111 above and the footnote referring to Document A4. The quotations come from para. 6.2.1 while the explanation of the elevational treatment is at paras. 6.6.1-13.

^B Document A4 – fig.38 on p.17

^C Document A4 – fig.36 on p.17.

- 13.97 There seems still less reason to continue the concept of the mansion block, or even the same architectural language, into Newcastle Place and Paddington Green. Buildings E1 and E2 are effectively separated by the tower and the shape of the site from the other buildings in the proposed development. Also, as I have indicated above, the adjacent Paddington Green frontage should be the key determinant of what is acceptable on the location for Building E1.
- 13.98 I can understand the logic in repeating at the rear of the main part of the site (in Buildings A1-A3) the three mansion blocks along the Edgware Road frontage (Buildings C1-C3). In terms of the site itself, the design solution is a good one. On the other hand, it places buildings more than 26m high very close to the rear boundary. Seen from Paddington Green, they would be about 48-55m behind the frontages of nos. 14-18, which are variously only about 8, 10, 13 and 15m high.^A Sainsbury's attempts to show in elevation what would be seen in perspective above the existing buildings from different viewpoints in the Green.^B I am not entirely convinced of the usefulness of those illustrations. While the mass and bulk of the proposed buildings may be accurately indicated, the effect of distance cannot be. While I might prefer a different solution (buildings lower or, as in Sainsbury's application, further away), the distance of Buildings A1-A3 behind the Paddington Green buildings seems to me likely to avoid any seriously harmful impression of the new having a domineering or overbearing effect over the old.
- 13.99 Sainsbury's makes other criticisms – on permeability, the Edgware Road frontage and the Church Street corner – but I find no serious cause for concern. On permeability, the east-west route through the Sainsbury's proposal may seem superficially more attractive but there is both merit and practicality in the appellant's approach of enhancing the route along Newcastle Place. Given the design concept, I find the Edgware Road façade and Church Street corner architecturally satisfactory.
- 13.100 Indeed, I am bound to say that I have no fears whatsoever about how detailed design and execution might proceed were either Option A or Option B allowed. The evidence from Squire and Partners' other buildings, particularly Brook House and 111 Strand, is of very great care being taken in the details of the design, the choice of materials and colours and, importantly, the actual execution on site. My concern is not about the quality of design or architecture *per se*. It is that I have serious misgivings about the concept being the correct one in urban design terms.
- f) Daylight and sunlight^C**
- 13.101 There is no issue between the parties on sunlight. WCC raises no daylighting concerns. A substantial amount of evidence on daylight by Sainsbury's, whose objection it was, culminated in only a few sentences in closing submissions.
- 13.102 In very simple terms, any redevelopment of the appeal site in a way that is appropriate in urban design terms will affect the amount of daylight reaching the existing windows of some neighbouring buildings. Moreover, comparisons with the site as it exists will put any redevelopment scheme in a poorer light than comparisons with the buildings that used to stand there. In my opinion, the latter is a much fairer approach, even though the site has been largely vacant for a number of years.

^A Document G6 – the outline of the proposed buildings in relation to the existing buildings is shown on drawing no. 0203[15.2]P152A.

^B Document E17.

^C See paras. 8.43 (Sainsbury's) and 9.118-126 (the appellant).

- 13.103 According to the BRE Guide,^A a Vertical Sky Component (VSC) of 27% will give the potential for good interior diffuse daylighting. A reduction in VSC to less than both 27% and 80% of its former value will be noticeable. 'Noticeable', however, is not to be equated with 'unacceptable'. And, as its introduction acknowledges, the Guide is just that - 'although it gives numerical guidelines, these should be interpreted flexibly because natural lighting is only one of many factors in site layout design'. That is true in urban areas especially, where VSCs very much lower than 27% do not seem to diminish the attraction of some popular residential areas.^B
- 13.104 The agreed statement, signed by the two expert witnesses^C and addressed by Dr Littlefair in his evidence for Sainsbury's, shows also the differences of opinion and calculation. They looked at different numbers of windows, compared the schemes with different conditions (as existing and with the original buildings) and may not even have looked at the same version of the Sainsbury's scheme (which is anyway still evolving and subject to amendment). All of this led to two sets of tables in the agreed statement. Whichever one looks at,^D it is clear that Sainsbury's scheme performs better. That is largely because buildings are kept further from the western boundary (to the rear of the Paddington Green properties). I am inclined to prefer the appellant's figures, because I find they provide a clearer comparison of the three schemes (Option A, Option B and Sainsbury's) with the original buildings on the site. Even on those figures,^E of the 479 windows assessed, Option A leaves only 230 meeting BRE guidelines and Option B 223, compared with Sainsbury's 288. Windows suffering reductions of 20-30% are 102 in both Options compared with 117 in Sainsbury's; those suffering reductions of 30-40% are 106 and 102 in Options A and B respectively compared with 58 in Sainsbury's, and those more than 40% are 34 and 50 compared with 16.
- 13.105 Of course, those figures relate to a guideline, not a statutory requirement. The appellant's evidence is that only fourteen windows would be left with a VSC of less than 11.7%^F - and that an assessment of Average Daylight Factors (ADFs), admittedly making assumptions about some room characteristics, shows that the vast majority of residential properties would not be adversely affected. ADF have the advantage of taking into account window size in relation to room size while VSC looks at the light reaching a window but not at the size of the window. All in all, I am satisfied that natural daylight conditions for all but a very small number of properties would not be inconsistent with what one would generally expect to find in a central London location.
- 13.106 Thus, while the Sainsbury's scheme would generally have less impact on the daylight reaching existing windows, I do not consider that what adverse effects there would be should outweigh the advantages of the appeals schemes if they are otherwise acceptable.

^A Document A11.4, Appendix 14.

^B Document A11.4, Appendix 11A - I held the inquiry into these appeals, where evidence was given that VSCs for ground floor windows in Pirilico ranged from 17.8 down to 9.9 (para. 180 of the report).

^C Document E7.

^D I pencilled the figures from Mr Webb's tables on to Dr Littlefair's Tables 1 and 2 to try to assist comparisons.

^E Document E7 - Mr Webb's tables on the last two pages of the document.

^F Document A11.4, para 61 on p.15 - 11.7 is the lowest figure identified by Sainsbury's in arguing that the Wilton Road proposals were acceptable.

u) The section 106 obligations^A

13.107 The section 106 obligations (one for each scheme^B) provide for the following:

- partial road widening as shown on the application plans;
- best endeavours for a period of ten years to acquire 283 Edgware Road at twice market value or £1.25 million, whichever is the greater;
- full widening between Newcastle Place and Church Street subject to acquisition of 283 Edgware Road;
- failing acquisition of 283, contributing the difference in cost between the two widening schemes towards enhancing public transport facilities in the vicinity of the appeal site;
- affordable housing;
- contributions to WCC's Social and Community Fund to be used for health, education and community project purposes;
- improvements to Paddington Green Police Station;^{10.12}
- car parking tariff and management schemes;
- a management strategy for the holiday let units;
- a code of construction practice;
- a contribution to bus priority measures (management and enforcement).

13.108 All of these seem to me to satisfy the terms of Circular 1/97. Dispute at the inquiry was about the size of certain contributions (to the Social and Community Fund) rather than the principle of them. The obligations contain a mechanism, at clause 1.2(b), whereby the First Secretary of State may vary, if appropriate, the amounts payable under Clauses 7 (road widening schemes) and 9 (Social and Community Fund).

283 Edgware Road and highways contributions

13.109 The representations to the inquiry related to the principle of acquiring 283 Edgware Road (and 5 Newcastle Place), not the time over which the obligation would apply or the sum that might be paid. I agree with the appellant that, if either appeal is allowed and the related obligation comes into play, any ransom element in the valuation of 283 will disappear. There was no other evidence to suggest that the sum in the obligation (£1.25 million or twice market value) is inappropriate.

Health^C

13.110 It is my view, in general terms, that the housing requirement in the UDP is a City-wide one and that contributions reasonably required towards health care on the introduction of new housing should be based on City-wide statistics. I find it inequitable that one development might be liable to a significantly larger or smaller contribution than another on the coincidental basis of the adequacy or otherwise of existing facilities in the immediate vicinity. WCC's calculation of the amount to be contributed towards health care is based on what might be needed to upgrade facilities in the immediate vicinity.^D

^A See paras. 6.55-64 (WCC), 9.138-152 (the appellant), 10.6 (the St Marylebone Society), 10.7 (Hall Park Residents' Association), 10.13 (Church Street Neighbourhood Forum), 10.14 (Paddington Waterways and Maida Vale Society) and 12.12-14.

^B Documents A53 and A54.

^C See paras. 6.58-59 (WCC) and 9.140-143 (the appellant).

^D Document B9, Appendix 8.

13.111 In the absence of information on household sizes and doctor:patient ratios in Westminster, I prefer the appellant's approach of looking at the GLA average household size (2.35 persons) and an average doctor:patient ratio (1:1950).^A That would lead to sums of £148,000 on Option A and £160,000 on Option B. WCC is concerned that average household size in affordable housing will be greater than in market housing and that a development with 35% affordable housing will therefore have a higher than average household size. That seems to me entirely logical, even though there is no evidence that the GLA average is not representative. I am therefore inclined towards slightly higher figures. Not entirely arbitrary, an average household size of 2.55 for the proposed developments (one extra person for every five units) would lead to figures of £160,000 on Option A and £170,000 on Option B.

Education^B

13.112 I believe that the same general rule should apply to education as to health care – that a contribution should be based on City-wide statistics, not on specific circumstances in the immediate vicinity. I consider that using GLA child yield figures is appropriate but am less convinced that the cost per pupil of providing a temporary classroom represents a robust basis for calculation. WCC says that two proposed City Academies may be expected to accommodate demand for secondary school places. On the other hand, it does not include the affordable housing in its calculations. As a result, I consider that WCC's suggestion^C of £218,000 for Option A and £256,000 for Option B may be seen as around the right levels, even if for different reasons than it suggests.

Church Street market^D

13.113 There must be, potentially, a threat to the Church Street market from the advent of the foodstore. The proposed development, and the foodstore in particular, would bring a significant overall improvement to the District Centre, which could generate more custom for the Church Street market. On the other hand, the environmental quality of the Centre is low and its vitality and viability is said to be neutral. The foodstore would be more likely to generate additional custom for the market and the District Centre if environmental improvement could also be brought about – but it might well have the opposite effect in the absence of any improvement. In my opinion, therefore, some sort of contribution is warranted. The list of works that might be anticipated is lengthy, and costly.^E Development on the appeal site should make only a contribution – but in my opinion, WCC's suggestion of £100,000 is too high while the appellant's suggestion of £50,000 is too low. I suggest £75,000.

Conclusion on section 106 obligations

13.114 The fixed sums included in the obligations are repaving (£20,000), St Mary's playground (£55,000), public art (£100,000) and Paddington Green (£45,000).^F On my reasoning above, Church Street market (£75,000) can be added to that. Also from above, the

^A Document A46.

^B See paras. 6.60 (WCC) and 9.144-145 (the appellant).

^C Document B10.

^D See paras. 6.61-64 (WCC) and 9.146-150 (the appellant).

^E Document B8, para. 5.17 on p.19 – £70,000-£100,000 for signage, an entrance feature, street furniture and lighting, £100,000 for hard landscaping and an unknown amount for improving the canopies. Also, Mr Way estimated total expenditure at £254,000 (para. 10.13 above), though I do not think that contributions would be appropriate to all that he envisages (a shopfront grant scheme and a marketing campaign in particular).

^F See the summary on the first page of Document A46

variable sums are health care (£160,000 for Option A and £170,000 for Option B) and education (£218,000 for Option A and £256,000 for Option B). That gives total contributions to the Social and Community Fund of £673,000 for Option A and £721,000 for Option B.

v) **Planning conditions**

13.115 The matters addressed in the inquiry session on conditions were included in amendments of the suggested conditions submitted before the close of the inquiry.^A I have no further comment to make save that, since they are already dealt with in the section 106 obligations, it seems unnecessary to include conditions nos. 8 and 9 (affordable housing and associated car parking) and 11 (car parking for Westminster Play Association). In the event that the appeal is allowed and planning permission granted on Option A, suggested conditions are set out in Annex D below. Similarly, suggested conditions for Option B are set out in Annex F below.

Other matters

13.116 Three other points deserve mention, all raised by local groups or individuals.

Holiday lets^B

13.117 The provision of holiday flats was criticised in the context of a scarcity of affordable housing. The two appeal schemes would include about 35% affordable housing, around 100 units, to which neither WCC nor the GLA has objected. To replace the holiday flats with market and affordable housing could, at the same proportions, bring another 50 or so affordable units. That said, I do not see how the proposals can be rejected on the basis of providing an inadequate amount of affordable housing.

The underpass and underground station^C

13.118 I agree that the underpass at the Harrow Road junction is uninviting and that the Bakerloo underground station would benefit from improvement and upgrading. TfL, however, has concentrated on road and bus improvements. The obligations seem to me to make a financial contribution appropriately related to the scale of the development. If contributions to improving the underpass and underground station were to be made, I would expect it to be at the expense of above-ground improvements. Thus, while sympathetic to the suggestion, I do not consider that the schemes can be rejected because of the absence of any contribution.

Residential parking^D

13.119 There is no objection by WCC or TfL to the residential parking access from Paddington Green. While 226 spaces would be provided, the number of trips in peak hours would be only a proportion of that. I think that Sainsbury's proposal could be seen as preferable in making access to both the foodstore and residential car parks from Church Street. That would keep additional traffic out of Paddington Green and I do not doubt that Church Street itself could accommodate the increase. That said, in the absence of a highways objection, I do not consider that the environmental benefit of keeping additional traffic out of Paddington Green amounts to a compelling objection.

^A Documents B19 and B20.

^B See paras. 10.5-6 (the St Marylebone Society) and 10.14 (Paddington Waterways and Maida Vale Society).

^C See paras. 10.6 (the St Marylebone Society) and 10.14 (Paddington Waterways and Maida Vale Society).

^D See para. 10.15 (Mary Griffiths).

Overall Conclusions

13.120 The various considerations above can be drawn together in three overall conclusions – 283 Edgware Road, highways matters and design matters.

283 Edgware Road

13.121 I am in no doubt that, if either Option A or Option B were built as proposed, with 283 left standing, the development would look somehow unfinished – the buildings would be complete but the surroundings would appear not to be. 283 would be but a remnant of an older terrace standing very close to, in some views almost in the way of, a substantial piece of modern architecture. Similarly, the line of the highways improvements, the carriageway having to narrow to pass 283 before widening again, would be bound to prompt the question of why 283 had not been included in the development. Also, both in absolute terms and in the context of the wider footways existing to the south and proposed to the north, the footway past the front of 283 would be very narrow indeed.

13.122 Nevertheless, I conclude that it would be possible to tolerate 283 remaining if there is a reasonable likelihood of it being acquired and demolished within the foreseeable future. To grant planning permission for either Option A or Option B would effectively remove any ransom value the property may have been thought to have, in which case the terms of the section 106 obligations appear to offer just that likelihood. They covenant the owner to use best endeavours, continuously for a period of ten years, to acquire the property for £1.25 million or twice market value, whichever is the greater.

13.123 In the Replacement UDP (almost certainly adopted at the time of writing^A), the supporting text to Policy TRANS 18 recognises that development between Newcastle Place and Church Street may have to take place in stages. WCC's resolution to grant planning permission on Option C similarly accepts this position.

Highways matters

13.124 In essence, there are just two highways matters to be resolved – car parking and bus running times – with the former potentially affecting the latter.

Policy

13.125 In the London Plan,^B Policy 3C.15 requires that all road schemes should, amongst other things, 'not increase the net traffic capacity of the corridor ...'. That must be the context for the suggested road widening from Harrow Road to St John's Wood Road. Similarly, Policy 3C.17 deals with the use of street space and presumes 'in favour of movement of people and goods, to support commerce, business and bus movements on the Transport for London Road Network (TLRN) ...'. Edgware Road is part of the TLRN. Policies 3C.22 and 3C.23 deal with parking and refer to standards in Annex 4.

13.126 In the Replacement UDP, Policy TRANS 18(A) safeguards the widening of Edgware Road, the supporting text noting that the narrowed carriageway causes congestion for both private and public transport 'on what is a major bus route'. Policies TRANS 21-25 deal with parking, Appendix 4.2 setting out a parking standards matrix.

^A See Document B22 – Document CD35 is the pre-inquiry version, Document CD37 has the Proposed Modifications following the inquiry.

^B Document CD32.

Parking

13.127 The London Plan standards indicate parking in the range 130-199 for a foodstore of the size proposed. However, the appellant's argument that the car park should be considered as serving the District Centre is a reasonable one – not only in helping to maintain the unity and integrity of the Centre but also numerically, in that total parking for the Centre would still remain below the acceptable maximum set out in the London Plan standards. Accordingly, I see no policy reason for resisting the 223 car parking spaces proposed.

Bus running times

13.128 The evidence persuades me that a 223-space car park would necessitate a separate right-turn phase for south-bound traffic on Edgware Road at the signalised junction with Church Street – but a 180-space car park would not. Even so, the modelled effect of a separate right-turn stage on north-bound bus running times is curious. I have discounted the PARAMICS evidence from Sainsbury's because of what seem to me serious flaws in the modelling. It is TRANSYT, with what I consider a suitably modelled base, that produces the curious results. It indicates that delays measured over the whole Edgware Road corridor could be greater without a right-turn phase than with one – which suggests that there is no good reason to resist a 223-space car park.

13.129 Sainsbury's line in closing, when it conceded the flaws in the PARAMICS model, was to rely on what could be observed. That is superficially attractive – but it cannot take into account the additional delay at the Broadley Street pedestrian crossing and the Church Street lights caused by the time needed to allow pedestrians to cross the wider road (thus reducing the green time available to buses).

13.130 It is only by widening Edgware Road as far as Maida Avenue or St John's Wood Road that the potential savings in running times become worthwhile. But the likelihood of such a scheme coming forward seems to me slender indeed. TfL had no proposal in its programme to widen Edgware Road when it objected to Policy TRANS 18 in the emerging Replacement UDP. Now it argues the benefits of such a scheme. But there is nothing to the proposal beyond the illustrative drawings put to the inquiry. And to implement them would demand the acquisition of a very substantial number of properties, the potential cost of which I consider unlikely to gain approval. The alternative is to modify the proposal – to narrower or fewer lanes – which must reduce the potential savings in bus running times.

Conclusion on highways matters

13.131 All things considered, I cannot recommend that the appeals be dismissed because they would prejudice a scheme for 6-lane widening of Edgware Road from Harrow Road to St John's Wood Road. Nor can I recommend dismissal because a 223-space car park would cause significant delay to bus running times compared with a 180-space car park.

Design matters

13.132 There several issues to be resolved – the 26-storey Option B tower compared with the 22-storey Option A tower, the seven storeys of Building E2 in Option B compared with the six storeys in Option A, the effect of Building E1 on the settings of the nearby listed buildings and the character and appearance of the conservation area, and the overall design concept. The first two were raised by WCC but not Sainsbury's; the last two were raised by Sainsbury's but not WCC.

Policy

13.133 In the Replacement UDP, Policy DES 1 deals with architectural quality and local distinctiveness, amongst other things, and Policy DES 2 might be said to apply that to extensive developments (such as this). Policy DES 3 resists high buildings that would have an adverse effect on the character and appearance of conservation areas, the settings of listed buildings or views from Royal Parks or would be incongruous within their surroundings. Policies DES 9 and DES 10 deal with proposals affecting conservation areas and listed buildings and Policy DES 15 with metropolitan and local views. Policy ENV 12 deals, amongst other things, with daylight standards.

13.134 In the London Plan, Policy 4B.1 sets out design principles, Policy 4B.8 promotes tall buildings where they would enhance London's character and Policy 4B.15 provides a London View Protection Framework.

The height of the tower

13.135 I see no need for a gateway feature on the appeal site to relate to the GU Tower, or any other tall building, on the south side of Harrow Road. From my analysis of the Certified Views, I conclude that a tall building on the appeal site should relate more to the heights of other tall buildings on the north side of Harrow Road. I agree with WCC that the 22-storey Option A tower would be appropriate but the 26-storey Option B tower would not. In terms of Replacement UDP Policy DES 3, I conclude that the height of the 26-storey tower would appear incongruous in its surroundings, despite the quality of the design. It falls against London Plan Policy 4B.8 for the same reason.

Building E2

13.136 In Option B, the increased height of Building E2 would draw attention to its close proximity to the Paddington Green buildings and its relative size compared to those buildings. I consider that it would appear uncomfortably close, in effect crowding in on them. In Option A, the lower building would be considerably less obvious, invisible in some views. I agree with WCC that the lower building is acceptable but the higher one is not. I conclude that Building E2 in Option B conflicts with the aims of Replacement UDP Policies DES 9 and DES 10. If there were no other compelling objection, the problem could be resolved by a condition that Building E2 should be to the design proposed for Option A.

Building E1

13.137 I conclude that the mass, design and building line of Building E1 are inappropriate in the context of the listed buildings to the north on Paddington Green and the character and appearance of the Conservation Area. I see no compelling reason why this building (or, indeed, Building E2) should be designed in very much the same idiom as the buildings along the Edgware Road frontage when the context is very different. I conclude that the design and building line of Building E1 conflict with the aims of Replacement UDP Policies DES 9 and DES 10.

The design concept

13.138 The traditional character of this part of Edgware Road derives from three- or four-storey terraces with ground floor shops. In places, notably Sheldon House and Parsons House, there has been modern redevelopment. The buildings in Paddington Green are generally

older than those in Edgware Road and, together with the green itself, I consider the area rightly designated a conservation area.

13.139 I have serious misgivings about imposing into this context a development based on the concept of the mansion – more particularly, one in which a number of mansions or buildings seem to be moulded almost into one single building by a uniform style and height very different to the character of the surrounding buildings. There are mansions to the south of Harrow Road and to the north of Maida Avenue – but that does not seem to me to justify introducing them here, in an area with its own distinctive character (and, in fact, with a character in Paddington Green different to that in Edgware Road).

13.140 In addition to the principle, the mansion concept seems to raise particular problems with regard to Buildings E1 and E2 (which I have considered above) and the Church Street façade, where I consider that Building C would be overbearing in relation to the existing buildings in the conservation area. My concern is with the concept, not with the quality of the more detailed aspects of the architecture. Nor does my concern extend to the tower. I find that a 22-storey tower would sit comfortably in relation to Hall and Braithwaite Towers and Paddington Green Police Station. Also, the design of the tower is rather different to the mansions around it, which indicates that it is not visually dependent on the architectural concept adopted over the rest of the site.

13.141 Despite it not being an objection raised by WCC, and despite CABE's support for the principles of the composition,^A I conclude that the design concept is inappropriate for the site and runs contrary to what is sought by Replacement UDP Policy DES 1.

Sainsbury's application

13.142 Sainsbury's proposals are not fully evolved. In general terms, I agree with CABE's views on them.^B At the same time, they indicate clearly to me how an alternative design approach could produce what I would consider a better urban design solution for the site, or how variations within the concept of the appeal proposals could do so. I have indicated above where or why I think improvements could arise. The architectural and urban design criticisms I have raised are based on objective assessment of the points raised by others and not on personal design preference or prejudice.

^A Document A5, Appendix 3.

^B Document E11.

14. RECOMMENDATIONS

File Ref. APP/X5990/E/03/1132470 (Option A – conservation area consent)

14.1 I recommend that the appeal be allowed and that conservation area consent be granted for the demolition of nos. 143, 145 and 147 Church Street and nos. 11, 12 and 13 Paddington Green, London W2, in accordance with the terms of application ref. 03/03464/CAC, dated 30 April 2003, and drawing no. 0203 [15.4] P001 A submitted therewith, subject to the following conditions:

- 1) the demolition hereby permitted shall be begun before the expiration of five years from the date of this decision;
- 2) the demolition hereby permitted shall not be begun before a contract for the carrying out of works of redevelopment of the site has been made and planning permission has been granted for the redevelopment for which the contract provides.

File Ref. APP/X5990/E/03/1132473 (Option B – conservation area consent)

14.2 I recommend that the appeal be allowed and that conservation area consent be granted for the demolition of nos. 143, 145 and 147 Church Street and nos. 11, 12 and 13 Paddington Green, London W2, in accordance with the terms of application ref. 03/03466/CAC, dated 30 April 2003, and drawing no. 0203 [15.4] P001 A submitted therewith, subject to the following conditions:

- 1) the demolition hereby permitted shall be begun before the expiration of five years from the date of this decision;
- 2) the demolition hereby permitted shall not be begun before a contract for the carrying out of works of redevelopment of the site has been made and planning permission has been granted for the redevelopment for which the contract provides.

File Ref. APP/X5990/A/03/1132475 (Option A – proposed development)

14.3 I recommend that the appeal be dismissed and that planning permission be refused for development to provide buildings of between 6 and 22 storeys to include a retail supermarket, 307 residential units, 156 holiday let units, associated car parking and landscaping.

File Ref. APP/X5990/A/03/1132476 (Option B – proposed development)

14.4 I recommend that the appeal be dismissed and that planning permission be refused for development to provide buildings of between 6 and 26 storeys to include a retail supermarket, 326 residential units, 156 holiday let units, associated car parking and landscaping.

Note

14.5 If, notwithstanding my recommendations, the Secretary of State were minded to allow appeal ref. APP/X5990/A/03/1132475 and/or appeal ref. APP/X5990/A/03/1132476, the drawings on which planning permission should be granted and the conditions to which planning permission should be subject are set out in Annexes C, D, E and F below.

John L Gray

Inspector

ANNEX A – APPEARANCES

FOR WESTMINSTER CITY COUNCIL (WCC)

Mr Hereward Philpot of Counsel

Instructed by C T Wilson, Director of Legal and Administrative Services, Westminster City Council.

He called

Mr David Clegg BSc DipUD MRTPI IHBC

Head of Design and Conservation (North Team), Westminster City Council.

Mrs Amanda Coulson BSc(Hons) MRTPI

Assistant Area Planning Officer, Westminster City Council.

Mr Martin Low CEng MIM MICE MIHT

Acting Director of Transportation, Westminster City Council.

FOR TRANSPORT FOR LONDON (TfL)

Mr John Hobson QC

Instructed by Sharpe Pritchard, Solicitors, Elizabeth House, Fulwood Place, London, WC1V 6HG.

He called

Mr Sam Richards BA BTP MRTPI

Head of Land Use Planning, TfL.

Mr Michael Mogridge MSc MICE

Director, Colin Buchanan & Partners.

FOR SAINSBURY'S SUPERMARKETS LIMITED

Mr William Hicks QC

Instructed by CMS Cameron McKenna, Solicitors, Mitre House, 160 Aldersgate Street, London, EC1A 4DD.

Mr Stephen Morgan of Counsel (part only)

They called

Mr Julian Foot BSc MSc MIHT MTPS

Director, Savell Bird & Axon.

Dr Paul Littlefair MA PhD CEng MCIBSE MSLI

Building Research Establishment.

Mr Michael Lowndes BA(Hons) DipTP MSc
DipCons(AA) MRTPI IHBC FRSA

Planning Director, Turley Associates.

Mr Gary Forster BA MPhil MRTPI FRSA

Director, Turley Associates.

Mr Lawrence Chetwood BA(Hons) DipArch(Dist)
RIBA

Chairman, Chetwood Associates.

FOR WEST END GREEN (PROPERTIES) LIMITED

Mr David Elvin QC
Mr Reuben Taylor of Counsel

Instructed by The London Planning Practice,
4 Goodwin's Court, Covent Garden, London,
EC4A 1AQ.

They called

Mr Michael Lewin BSc CEng MICE MCIH MIIT
Mr Jerome Webb BA(Hons) MA MRICS
Mr Richard Coleman DipArch(Cant) RIBA
Mr Michael Squire MA DipArch(Cantab) RIBA
Mr Nicholas de Lotbiniere BSc MPhil MRICS MRTPI

Sector Director, Capita Symonds Limited.
Associate, Gordon Ingram Associates.
Independent Architectural Consultant.
Principal Partner, Squire and Partners.
Senior Partner, The London Planning Practice.

FOR MR DEAN & SONS

Miss Carine Patry of Counsel

She made submissions and answered questions
on behalf of Mr Dean.

FOR THE METROPOLITAN POLICE

Mr Ian Johnson

Senior Planner, Atkins.

He gave evidence himself and called

Supt Tony Robinson

Paddington Green Police Station.

OTHER INTERESTED PERSONS

Mr John Walton

Honorary Secretary, Paddington Residents' Active Concern on
Transport (PRACT), 70 Gloucester Terrace, London, W2 3HH.

Mrs Victoria Glaessner

Planning Co-ordinator and Honorary Secretary, The St Marylebone
Society, 80 Balcombe Street, London, NW1 6NE.

Mr Brian Eves

8 Philip Court, Hall Place, London, W2 1LS, on behalf of Hall Park
Residents' Association.

Mr J Simon Davies

Chairman, Hyde Park Estate Association, 9 Hyde Park Crescent,
London W2 2PY.

Mr Mike Way

Chairman, Church Street Neighbourhood Forum, Neighbourhood
Centre, 88 Church Street, London, NW8 8E1.

Mr Hans Norton

Chair of Planning Sub-Committee, Paddington Waterways and Maida
Vale Society, 19a Randolph Road, London, W9 1AN.

Mrs Mary Griffiths

107 St Mary's Mansions, St Mary's Terrace, London, W2 1SZ.

ANNEX B – DOCUMENTS

CORE DOCUMENTS

- CD1 Site location map of the appeal site.
- CD2 Photographs of the appeal site.
- CD3 Planning history.
- CD4 Planning Brief, 1993.
- CD5 Committee report dated 12 March 1998.
- CD6 Committee report dated 23 August 2001.
- CD7 Committee report dated 4 October 2001.
- CD8 Committee report and minute dated 6 December 2001.
- CD9 Decision letters dated 8 January 2002.
- CD10 GLA report dated 28 January 2003.
- CD11 Committee report and minute dated 30 January 2003.
- CD12 Application forms and supporting documents, Options A and B – see Documents G6 and G7 respectively.
- CD13 GLA report and letter dated 6 August 2003.
- CD14 Consultation responses prior to 21 August 2003.
- CD15 Committee report and minute dated 21 August 2003.
- CD16 Mayor's letter to WCC dated 30 October 2003.
- CD17 Consultation responses prior to 30 October 2003.
- CD18 Committee report and minute dated 30 October 2003.
- CD19 TEL's letter to WCC dated 12 November 2003.
- CD20 Mayor's letter to WCC dated 18 December 2003.
- CD21 Consultation responses prior to 18 December 2003.
- CD22 Committee report and minute dated 18 December 2003.
- CD23 Decision letters dated 19 December 2003.
- CD24 GLA report dated 7 January 2004.
- CD25 Mayor's letter dated 11 February 2004.
- CD26 Application forms and supporting documents, Application C – see Document A60.
- CD27 GLA report dated 14 April 2004.
- CD28 Mayor's letter to WCC dated 27 April 2004.
- CD29 Consultation responses prior to 29 April 2004 regarding Application C.
- CD30 Committee Report dated 29 April 2004 regarding Application C.
- CD31 GLA report and Mayor's letter to WCC dated 24 May 2004.
- CD32 The London Plan, published February 2004.
- CD33 Mayor's Transport Strategy, 2001.
- CD34 City of Westminster Unitary Development Plan, Revised (Second) Deposit, October 2001.
- CD35 City of Westminster Unitary Development Plan, Pre-Inquiry version, August 2002.
- CD36 *Not submitted*
- CD37 Schedule of Modifications to Westminster's Pre-Inquiry UDP and Reasons for Them, May 2004.
- CD38 Supplementary Planning Guidance on Planning Obligations, Draft for Public Consultation, October 2003.
- CD39 Supplementary Planning Guidance on Sustainable Buildings.
- CD40 Environmental Masterplan for the Church Street Neighbourhood, Final Report, 17 April 2003.
- CD41 Church Street Action Plan.
- CD42 City of Westminster Shopping Area Health Check Survey District Centre 1: Church Street / Edgware Road, August 2002.
- CD43 Paddington Green Conservation Area leaflet and Paddington Green Conservation Area Audit.

- CD44 Lisson Grove Conservation Area leaflet and Lisson Grove Conservation Area Audit.
- CD45 Maida Vale Conservation Area leaflet and Maida Vale Conservation Area Audit.
- CD46 List descriptions of neighbouring listed buildings.
- CD47 City of Westminster High Buildings Study, EDAW, September 2000.
- CD48 EH/CABE Guidance on Tall Buildings, March 2003.
- CD49 English Heritage: Conservation Area Practice, 1996.
- CD50 By Design: Urban design in the planning system: towards better practice, CABE, 2000.
- CD51 City of Westminster: Design Matters, 2002.
- CD52 The Government's Response to the Transport, Local Government and Regional Affairs Select Committee's Report on Tall Buildings, November 2002.
- CD53 Fruin Pedestrian Theory, Highway Capacity Manual 2000.
- CD54 TRANSYT 11 User Guide. (two volumes)
- CD55 Review of West End Green Development Proposals, CBP, April 2004. (two volumes)
- CD56 *Not submitted*
- CD57 TTS6 – Design Standards for Signal Schemes in London, August 2002.
- CD58 London Buses – Operational and construction guidelines, April 2002.
- CD59 London Buses – Bus Priority Action Plan 2004-2011, Consultation Draft, October 2002.
- CD60 Inner London Bus Services – Summary of changes 2002/early 2003.
- CD61 London Buses The case for investing in London's buses: Presenting the results of the London Buses Strategic Review, September 2003.
- CD62 Mayor's letter dated 1 February 2001 (actually dated 1 January 2001), representation on First Deposit Replacement UDP.
- CD63 Mayor's letter dated 26 February 2002 (actually undated), representation on Second Deposit UDP.
- CD64 Mayor's letter to WCC dated 22 October 2002, clarifying TfL's response to the UDP.
- CD65 Mayor's letter to WCC dated 14 February 2003, stage I response to early West End Green scheme.
- CD66 Trip Rate Data – Sainsbury's; Ladbroke Grove.
- CD67 *Not submitted*
- CD68 Edgware Road Bus Survey, Hyder, August 2003.
- CD69 City of Westminster UDP, adopted July 1997.
- CD70 Design Standards for Cycling in London, TfL, 2003.
- CD71 The Value of Urban Design, CABE and DETR, 2001.

DOCUMENTS SUBMITTED BY WESTMINSTER CITY COUNCIL (WCC)

- B1 Hereward Phillpot's opening submissions.
- B2 David Clegg's summary proof of evidence.
- B3 David Clegg's proof of evidence.
- B4 Appendices to David Clegg's proof of evidence.
- B5 Errata to David Clegg's proof of evidence.
- B6 David Clegg's plan of photograph viewpoints.
- B7 Amanda Coulson's summary proof of evidence.
- B8 Amanda Coulson's proof of evidence.
- B9 Appendices to Amanda Coulson's proof of evidence.
- B10 Addendum to Amanda Coulson's proof of evidence.
- B11 Martin Low's summary proof of evidence.
- B12 Martin Low's proof of evidence.
- B13 Appendices to Martin Low's proof of evidence.
- B14 Missing part of CD40.
- B15 Response from Westminster Primary Care Trust.
- B16 Letters from English Heritage to the Planning Inspectorate.
- B17 Extracts from committee report in respect of earlier (withdrawn) application including 28-storey building.
- B18 David Clegg's supplementary statement in respect of the Grand Union building.

- B19 Suggested conditions for Option A.
- B20 Suggested conditions for Option B
- B21 Hereward Phillipot's closing submissions.
- B22 Letter dated 4 November 2004 from WCC explaining adoption of the Replacement UDP and attaching Map 5.1 (PSPA) and Policy DES 3 (High Buildings) and supporting text.

DOCUMENTS SUBMITTED BY TRANSPORT FOR LONDON (TfL)

- D1 John Hobson's opening submissions.
- D2 Sam Richards' summary proof of evidence.
- D3 Sam Richards' proof of evidence, with Appendix.
- D4 Michael Mogridge's summary proof of evidence.
- D5 Michael Mogridge's proof of evidence, with Figures, Tables and Drawings.
- D6 Supplementary note to Sam Richards' proof of evidence.
- D7 Micro-simulation modelling – guidance note for TfL, July 2003.
- D8 Review of West End Green development proposals (final draft), 16 December 2003.
- D9 Review of West End Green development proposals (final draft), March 2004.
- D10 Michael Mogridge's note dated 14 July 2004.
- D11 Michael Mogridge's note dated 15 July 2004.
- D12 TRICS data for Sainsbury's Camden, 28 June 1991.
- D13 Michael Mogridge's note dated 16 July 2004.
- D14 John Hobson's closing submissions.

DOCUMENTS SUBMITTED BY SAINSBURY'S SUPERMARKETS LIMITED

- E/JF/1 Julian Foot's proof of evidence, with Figures.
- E/JF/2 Appendices to Julian Foot's proof of evidence.
- E/JF/3 Julian Foot's summary proof of evidence.
- E/JF/4 Julian Foot's rebuttal proof of evidence.
- E/JF/5 Note on PARAMICS modelling.
- E/JF/6 Swept path for hgv turning from Edgware Road into Church Street.
- E/PJL/1 Paul Littlefair's proof of evidence.
- E/PJL/2 Appendices to Paul Littlefair's proof of evidence.
- E/PJL/3 Paul Littlefair's summary proof of evidence.
- E/MAL/1 Michael Lowndes' proof of evidence.
- F/MAL/2 Appendices to Michael Lowndes' proof of evidence.
- E/MAL/3 Michael Lowndes' summary proof of evidence.
- F/GJF/1 Gary Forster's proof of evidence.
- E/GJF/2 Appendices to Gary Forster's proof of evidence.
- E/GJF/3 Gary Forster's summary proof of evidence.
- E/LNC/1 Laurence Chetwood's proof of evidence.
- E/LNC/2 Appendices to Laurence Chetwood's proof of evidence.
- E1 William Hicks' and Stephen Morgan's opening submissions.
- E2 Comparison of mean times per pcu for cruise and delay in pm peak.
- E3 Signal timings in pm peak.
- E4 Note on observed traffic flows on Edgware Road.
- E5 Expanded note on signal timings in pm peak.
- E6 Speeches of the Sustainable Buildings Task Group.
- E7 Agreed statement on daylight and sunlight.
- E7.1 Drawing no. 1021-87/A axonometric view of Sainsbury's scheme.
- E7.2 Drawing showing heights of Sainsbury's scheme.
- E8 Revised Sainsbury's application plans.

- E9 Correspondence file.
- E10 Blight Notice served by Mr Dean and Counter-notice served by TfL.
- E11 CABE report on the Sainsbury's scheme
- E12 Revised massing elevations – Sainsbury's alternative scheme.
- E13 Officers' report and minutes of Committee's consideration of the Paddington Station redevelopment.
- E14 Sainsbury's comments on the draft obligations for Options A and B (submitted by letter dated 3 September 2004).
- E15 Sainsbury's comments on judicial review (submitted by letter dated 6 September 2004).
- E16 Photomontage of West End Green scheme prepared by Laurence Chetwood.
- E17 Drawings prepared by Laurence Chetwood showing the appeal proposals from Paddington Green.
- E18 Sainsbury's note on signal timings at the Church Street junction.
- E19 Secretary of State's decision and Inspector's report ref. APP/U2235/A/04/1142409.
- E20 William Hicks' closing submissions.
- E21 Sainsbury's application and supporting information, comprising – Paddington Village application file, 02-04-04; application plans; accommodation schedule; landscape character areas; management strategy; daylight and sunlight report; wind effects report; wind tunnel testing report; noise assessment; transport assessment; planning and urban design statement; architectural and urban design strategy; visual assessment; shadowing analysis.
- E22 Edgware Road Scheme Comparisons, SBA report on West End Green partial and full road widening schemes and Sainsbury's full widening scheme.
- E23 Three CDs of PARAMICS simulations – existing; partial widening; full widening.

DOCUMENTS SUBMITTED BY WEST END GREEN (PROPERTIES) LIMITED

- A1 Nicholas de Lotbiniere's proof of evidence.
- A2 Appendices to Nicholas de Lotbiniere's proof of evidence.
- A3 Nicholas de Lotbiniere's summary proof of evidence.
- A4 Michael Squire's proof of evidence.
- A5 Appendices to Michael Squire's proof of evidence.
- A5.MS1 Squire and Partners.
- A6 Michael Squire's summary proof of evidence.
- A7 Michael Lewin's proof of evidence.
- A8 Appendices to Michael Lewin's proof of evidence. (3 volumes)
- A9 Michael Lewin's summary proof of evidence.
- A10 Jerome Webb's proof of evidence.
- A11 Appendices to Jerome Webb's proof of evidence. (4 volumes)
- A12 Jerome Webb's summary proof of evidence
- A13 Richard Coleman's proof of evidence.
- A14 Appendices to Richard Coleman's proof of evidence.
- A15 Richard Coleman's summary proof of evidence.
- A16 David Elvin's and Reuben Taylor's opening submissions.
- A17 Squire and Partner's note regarding building heights.
- A18 Map identifying social and community facilities in the vicinity of the appeal site.
- A19 Westminster Primary Care Trust, Local Delivery Plan 2003-2006.
- A20 WCC Paddington Special Policy Area Factsheet (February 2004).
- A21 Plan of site visit, Thursday 8 July 2004.
- A22 Draft unilateral undertaking, Option A, dated 8 July 2004.
- A23 Draft unilateral undertaking, Option B, dated 8 July 2004.
- A24 Michael Lewin's rebuttal of Michael Mogridge's proof of evidence, circulated 9 July 2004.
- A25 Michael Lewin's rebuttal of Julian Foot's proof of evidence, 13 July 2004.
- A26 CBP six-lane widening to Church Street – Capita Symonds' sketch illustrating stage

- timings, circulated 16 July 2004
- A27 Extract from Appendix G to CBP Report (CD55): Trip Rate and Parking Accumulation.
- A28 SBA Traffic Assessment for Sainsbury's scheme on appeal site (March 2004).
- A29 Capita Symonds' swept path for 16.5m hgv turning from Edgware Road into Church Street.
- A30 Michael Lewin's additional clarification on points arising in the inquiry on transport issues, July 2004.
- A31 Capita Symonds' table of signal timings, submitted 20 July 2004.
- A32 File of correspondence with Sainsbury's Supermarkets Limited (submitted 20 July 2004).
- A33 BRE Report on daylight and sunlight for Sainsbury's scheme for the appeal site (dated 31 March 2004).
- A34 Jerome Webb's summary table of VSCs of Options A and B versus Sainsbury's proposals.
- A35 A3 Brochure of Squire and Partners' Planning Appeal Drawings for Appeal A (MS3.3).
- A36 A3 Brochure of Squire and Partners' Planning Appeal Drawings for Appeal B (MS3.2).
- A37 A3 Brochure of Squire and Partners' Appeal Information (MS3.1)
- A37A Artist's impression produced by Squire and Partners (replacing p.13 in A37).
- A37B Sainsbury's scheme outline produced by Squire and Partners (replacing p.29 in A37).
- A38 Lapsed planning permission for 283 Edgware Road.
- A39 Capita Symonds' letter dated 7 July 2004 and revisions H & I of drawing no. 3T58809/B/1.
- A40 'Delivering Value for Money', TfL, March 2004.
- A41 Photograph of Mary Adelaide House.
- A42 Michael Squire's montage of Church Street, responding to B16.
- A43 E-mail of 19 September 2004 from Chelsfield Ltd re. Paddington Basin and the Grand Union Building site.
- A44 Mr Squire's PowerPoint presentation.
- A45 Table of comparative building heights for Options A and B and the earlier 28 storey scheme.
- A46 Nicholas de Lotbiniere's summary of planning benefits offered and calculation of health centre contribution.
- A47 E-mail correspondence re. Church Street signal timings.
- A48 Drawing showing dimensions and location of 283 Edgware Road.
- A49 Statement of Common Ground with WCC on land use planning and policy issues.
- A50 Statement of Common Ground with TfL on transport assessments.
- A51 Revised draft obligation for Option A, with copy showing changes made.
- A52 Revised draft obligation for Option B, with copy showing changes made.
- A53 Executed section 106 obligation for Option A.
- A54 Executed section 106 obligation for Option B.
- A55 David Blvin's and Reuben Taylor's closing submissions.
- A56 Extract from Handbook of Rent Review, Reynolds and Featherstonehaugh, 2004.
- A57 R v Westminster City Council *ex parte* Monahan [1990] 1QB 87.
- A58 Tesco Stores Ltd v Secretary of State for the Environment [1995] 1WLR 759.
- A59 R v Plymouth City Council *ex parte* Plymouth and South Devon Co-operative Society Limited [1993] 67 P&CR 78.
- A60 West End Green's Option C proposals, comprising - application plans; transport assessment; design report; and certified views brochure.

DOCUMENTS SUBMITTED BY OTHER INTERESTED PERSONS

- F1 John Walton's proof of evidence on behalf of Paddington Residents' Active Concern on Transport (PRACT).
- F2 Street map of the area around the appeal site.
- F3 Extract from WCC Committee reports of 18 December 2003 (on Option A) and 29 April

- 2004 (on Option C).
- F4 John Walton's address to the inquiry.
- F5 Victoria Glaessner's statement to the inquiry on behalf of the St Marylebone Society.
- F6 Brian Eves' statement to the inquiry on behalf of Hall Park Residents' Association.
- F7 Written objection on behalf of M R Dean & Sons.
- F8 Copy of letter dated 2 July 2004 from Gerald Eve on behalf of M R Dean & Sons.
- F9 J Simon Davies's statement to the inquiry on behalf of the Hyde Park Estate Association.
- F10 Mike Way's statement to the inquiry on behalf of the Church Street Neighbourhood Forum.
- F11 Letters dated 5 July 2004 and 25 September 2004 from Mary Griffiths.
- F12 Letter dated 30 October 2004 (submitted 1 October) from Atkins withdrawing the objection to the proposals made by the Metropolitan Police.

INQUIRY DOCUMENTS

- G1 Lists of persons present at the inquiry.
- G2 Council's letter of notification of the inquiry and list of those notified.
- G3 Council's letter of notification of the resumption of the inquiry.
- G4 Bundle of letters from thirteen groups and individuals received in December 2003 (in the red folder on file E/03/1132470).
- G5 Letters from English Heritage and the Westminster Play Association received by WCC but not with G4.
- G6 The application plans and supporting information for Option A, comprising –
1. the application plans (see Annex C for complete list of drawings on which planning permission might be granted);
 2. amended drawing no.0203|15.2|P155B (submitted during the inquiry);
 3. Transport Assessment;
 4. Automatic Traffic Count Data;
 5. Noise Assessment Report;
 6. Façade Engineering Report;
 7. Wind Environment Report;
 8. Daylight and Sunlight Report;
 9. Overshadowing Study Report;
 10. Design Report;
 11. Certified Views Brochure.
- G7 The application plans and supporting information for Option B, comprising –
1. the application plans (see Annex E for complete list of drawings on which planning permission might be granted);
 2. amended drawing no.0203|15.2|P255B (submitted during the inquiry);
 3. Transport Assessment (see G6.3);
 4. Automatic Traffic Count Data (see G6.4);
 5. Noise Assessment Report;
 6. Façade Engineering Report;
 7. Wind Environment Report;
 8. Daylight and Sunlight Report;
 9. Overshadowing Study Report;
 10. Design Report;
 11. Certified Views Brochure.

ANNEX C – OPTION A

Drawings on which planning permission might be granted

(All in Document G6.1 unless otherwise annotated)

Site Plan (unnumbered)

Existing Site Plan – 0203 [15.06] P001 A
Existing Elevation – 0203 [15.06] P010 A
Existing Elevations – 0203 [15.06] P0011 A
Existing Elevation – 0203 [15.06] P012 A
Existing Elevation – 0203 [15.06] P013 A
Existing Elevation – 0203 [15.06] P014 A
Proposed Site Plan – 0203 [15.1] P120 A
Lower Ground Level -2 – 0203 [15.1] P122 A
Lower Ground Level -1 – 0203 [15.1] P123 A
Ground Floor – 0203 [15.1] P124 B
Mezzanine Floor – 0203 [15.1] P125 A
Floor Plan Levels 01 and 03 – 0203 [15.1] P126 A
Floor Plan 02 Level – 0203 [15.1] P127 A
Floor Plan 04 Level – 0203 [15.1] P128 A
Floor Plan 05 Level – 0203 [15.1] P129 A
Floor Plan Levels 06-15 – 0203 [15.1] P130 A
Floor Plan Levels 16-19 – 0203 [15.1] P131 A
Floor Plan Level 20 – 0203 [15.1] P132 A
Floor Plan Level 21 – 0203 [15.1] P133 A
Plant Level – 0203 [15.1] P134 A
Roof Plan – 0203 [15.1] P135 A
Block E Ground Level – 0203 [15.1] P142 A
Block E Levels 01-03 – 0203 [15.1] P143 A
Block E Level 04 – 0203 [15.1] P144 A
Block E Level 05 – 0203 [15.1] P145 A
Block E Roof Plan – 0203 [15.1] P146 A
Ground Floor Refuse Strategy – 0203 [15.01] P150 A
Typical Floor Refuse Strategy – 0203 [15.01] P151 A
East Elevation - Edgware Road – 0203 [15.2] P150 A
South Elevation - Newcastle Place – 0203 [15.2] P151 A
West Elevation - Paddington Green – 0203 [15.2] P152 A
West Elevation - Internal – 0203 [15.2] P153 A
East Elevation - Block E – 0203 [15.2] P154 A
North Elevation - Church Street – 0203 [15.2] P155 B (Document G6.2)
East Site Elevation - Edgware Road – 0203 [15.2] P156 A
Section A-A – 0203 [15.2] P160 A
Section B-B – 0203 [15.2] P161 A
Section C-C – 0203 [15.2] P162 A
Section D-D – 0203 [15.2] P163 A
Section E-E – 0203 [15.2] P164 A
Section F-F – 0203 [15.2] P165 A
Section G-G – 0203 [15.2] P166 A
Existing on-street parking – Symonds 3T58809/A/32
Proposed on-street parking – Symonds 3T58809/A/33
Paving on Church Street – Symonds 3T58809/A/34
Edgware Road partial widening – Symonds 3T58809/B/1/H (Document A39.1)

ANNEX D – OPTION A

Conditions should planning permission be granted

(Numbers in brackets after each condition refer to the suggested condition in Document B19)

1. The development hereby permitted shall begin before the expiration of five years from the date of this decision.
2. No works shall take place outside the hours of 0800-1800 Mondays to Fridays and 0800-1300 on Saturdays and not at all on Sundays or bank or public holidays unless the local planning authority has given prior consent in writing. (1)
3. No works on any phase of the development hereby permitted (as identified by the building reference numbers on drawing no. 0203 [15.1] P120 A) shall take place before samples of the materials to be used in the construction of the external surfaces of that phase have been submitted to and approved in writing by the local planning authority. (2)
4. No works on any phase of the development hereby permitted (as defined in condition 3 above) shall take place before the following details relevant to that phase have been submitted to and approved in writing by the local planning authority:
 - doors and windows at a scale of 1:20;
 - roof top plant at a scale of 1:50;
 - the foodstore shopfront at a scale of 1:50;
 - the shopfronts at the base of the tower at a scale of 1:50;
 - boundary treatments and gates at a scale of 1:20;
 - security gates to the car parks and foodstore service area at a scale of 1:20.Development shall be carried out in accordance with the approved details. (3)
5. The 307 residential units hereby permitted shall not be used as holiday accommodation. (4)
6. The foodstore hereby permitted shall be used for the retail sale only of food and drink together with ancillary household goods and clothes. (5)
7. The foodstore hereby permitted shall not be open outside the hours of 0800-2200 unless the local planning authority has given written consent to any variation. (5)
8. The foodstore car park hereby permitted shall not be open to the public more than 15 minutes before the foodstore opens or more than 30 minutes after it closes. (6)
9. The two shop units hereby permitted on the ground floor of the tower shall be used only for uses within Classes A1 and A2 of the Town and Country Planning (Use Classes) Order 1987 (or the equivalent classes in any Order revoking and re-enacting that Order). (7)
10. A minimum of 10% of the spaces in both the residential and foodstore car park shall be bays for the disabled. (9+10)
11. No doors or gates shall open over or across any road or footway. (12)
12. The parking, access, loading, unloading and manoeuvring areas shown on the application plans shall be retained for and used only for those purposes. (13)
13. No works on any phase of the development hereby permitted (as defined in condition 3 above and including the foodstore) shall take place before details of cycle parking relevant to that phase have been submitted to and approved in writing by the local planning authority. The approved cycle parking shall be provided prior to that phase coming into use and be retained thereafter for that purpose. (14)
14. No works on any phase of the development hereby permitted (as defined in condition 3 above and including the foodstore) shall take place before details of access for the disabled, as they relate to that phase, have been submitted to and approved in writing by the local planning authority. The details shall include:

- details of all thresholds;
- plans, elevations and sections of the relevant parts of the development at a scale of 1:50;
- details of all doors and handrails.

Development shall be carried out in accordance with the approved details. (15)

15. Notwithstanding the information shown on the application plans, no works on any phase of the development hereby permitted (as defined in condition 3 above and including the foodstore) shall take place before details of refuse storage have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. (16)
16. No works on any phase of the development hereby permitted (as defined in condition 3 above and including the foodstore) shall take place before details of a security scheme have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. (17)
17. No development shall take place until the applicant, or its agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. (18)
18. No demolition work on nos. 285-289 Edgware Road shall take place before details for the support, protection and making good of no. 283 Edgware Road and no. 5 Newcastle Place have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details. (19)
19. No development shall take place before full details of hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These works shall be carried in accordance with both the approved details and a programme first agreed in writing by the local planning authority. (20)
20. A scheme of public art within the site of the development hereby permitted shall be submitted to the local planning authority within six months of the commencement of development. The art, as approved, shall be provided before any part of the development is brought into use, unless the local planning authority gives written consent to any variation. (21)
21. No works on any phase of the development hereby permitted shall take place before details of the following, as they relate to that phase, have been submitted to and approved in writing by the local planning authority:
 - a centralised satellite dish and TV system to serve the whole of the development;
 - window cleaning methods and equipment;
 - measures to address the impact of the proposed tower on TV reception in the area.Development shall be carried out in accordance with the approved details. (22)
22. No works on the foodstore hereby permitted shall take place before details of a ventilation system to serve it have been submitted to and approved in writing by the local planning authority. The details shall cover its design, supported by an acoustic report, its installation and any associated plant. The system shall be installed in accordance with the approved details. (23)
23. No works on the foodstore hereby permitted shall take place before details of sound insulation measures to prevent noise transmission from the service area to the flats above have been submitted to and approved in writing by the local planning authority. The measures shall be implemented in accordance with the approved details. (24)
24. No works on the foodstore hereby permitted shall take place before details have been submitted to and approved in writing by the local planning authority which ensure that the plant, turntable and mechanically operated doors for the service area will not at any time generate noise exceeding the background noise level outside the nearest residential unit. Development shall be carried out in accordance with the approved details. (25)

25. No machinery or associated equipment, ducts, tanks, satellite dishes or radio aerials shall be installed on the roofs of any of the buildings hereby permitted without the prior written consent of the local planning authority. (26)
26. All plant and machinery associated with the development hereby permitted shall be installed and operated so as to ensure that no perceptible noise or vibration is transmitted through the structure to adjoining premises. (27)
27. No development shall take place before details of all foundations and groundworks in relation to the nearby London Underground tunnel have been submitted to and approved in writing by the local planning authority. (28)

Additional condition should the Secretary of State consider that foodstore car parking should be limited to avoid the need for a right-turn stage at the Church Street signals:

28. No more than 180 spaces shall be provided in the foodstore car park. (10)

ANNEX E – OPTION B

Drawings on which planning permission might be granted

(All in Document G7.1 unless otherwise annotated)

Site Plan (unnumbered) (Document G6.1)
Existing Site Plan – 0203 [15.06] P001 A
Existing Elevation – 0203 [15.06] P010 A
Existing Elevations – 0203 [15.06] P0011 A
Existing Elevation – 0203 [15.06] P012 A
Existing Elevation – 0203 [15.06] P013 A
Existing Elevation – 0203 [15.06] P014 A
Proposed Site Plan – 0203 [15.1] P220 A
Lower Ground Level -2 – 0203 [15.1] P222 A
Lower Ground Level -1 – 0203 [15.1] P223 A
Ground Floor – 0203 [15.1] P224 B
Mezzanine Floor – 0203 [15.1] P225 A
Floor Plan Level 01 – 0203 [15.1] P226 A
Floor Plan Level 02 – 0203 [15.1] P227 A
Floor Plan Level 03 – 0203 [15.1] P228 A
Floor Plan Level 04 – 0203 [15.1] P229 A
Floor Plan Level 05 – 0203 [15.1] P230 A
Floor Plan Levels 06-13 – 0203 [15.1] P231 A
Floor Plan Levels 14-24 – 0203 [15.1] P232 A
Floor Plan Level 25 – 0203 [15.1] P233 A
Plant Level – 0203 [15.1] P234 A
Roof Plan – 0203 [15.1] P235 A
Block E Ground Level – 0203 [15.1] P242 A
Block E Levels 01-03 – 0203 [15.1] P243 A
Block E Level 04 – 0203 [15.1] P244 A
Block E Level 05 – 0203 [15.1] P245 A
Block E Level 06 – 0203 [15.1] P246 A
Block E Roof Plan – 0203 [15.1] P247 A
Ground Floor Refuse Strategy – 0203 [15.01] P250 A
Typical Floor Refuse Strategy – 0203 [15.01] P251 A
East Elevation - Edgware Road – 0203 [15.2] P250 A
South Elevation - Newcastle Place – 0203 [15.2] P251 A
West Elevation - Paddington Green – 0203 [15.2] P252 A
West Elevation - Internal – 0203 [15.2] P253 A
East Elevation - Block E – 0203 [15.2] P254 A
North Elevation - Church Street – 0203 [15.2] P255 B (Document G7.2)
East Site Elevation - Edgware Road – 0203 [15.2] P256 A
Section A-A – 0203 [15.2] P260 A
Section B-B – 0203 [15.2] P261 A
Section C-C – 0203 [15.2] P262 A
Section D-D – 0203 [15.2] P263 A
Section E-E – 0203 [15.2] P264 A
Section F-F – 0203 [15.2] P265 A
Section G-G – 0203 [15.2] P266 A
Existing on-street parking – Symonds 3T58809/A/32
Proposed on-street parking – Symonds 3T58809/A/33
Paving on Church Street – Symonds 3T58809/A/34
Edgware Road partial widening – Symonds 3T58809/B/1/H (Document A39.1)

ANNEX F – OPTION B

Conditions should planning permission be granted

(Numbers in brackets after each condition refer to the suggested condition in Document B20)

1. The development hereby permitted shall begin before the expiration of five years from the date of this decision.
2. No works shall take place outside the hours of 0800-1800 Mondays to Fridays and 0800-1300 on Saturdays and not at all on Sundays or bank or public holidays unless the local planning authority has given prior consent in writing. (1)
3. No works on any phase of the development hereby permitted (as identified by the building reference numbers on drawing no. 0203 [15.1] P220 A) shall take place before samples of the materials to be used in the construction of the external surfaces of that phase have been submitted to and approved in writing by the local planning authority. (2)
4. No works on any phase of the development hereby permitted (as defined in condition 3 above) shall take place before the following details relevant to that phase have been submitted to and approved in writing by the local planning authority:
 - doors and windows at a scale of 1:20;
 - roof-top plant at a scale of 1:50;
 - the foodstore shopfront at a scale of 1:50;
 - the shopfronts at the base of the tower at a scale of 1:50;
 - boundary treatments and gates at a scale of 1:20;
 - security gates to the car parks and foodstore service area at a scale of 1:20.Development shall be carried out in accordance with the approved details. (3)
5. The 326 residential units hereby permitted shall not be used as holiday accommodation. (4)
6. The foodstore hereby permitted shall be used for the retail sale only of food and drink together with ancillary household goods and clothes (5)
7. The foodstore hereby permitted shall not be open outside the hours of 0800-2200 unless the local planning authority has given written consent to any variation. (5)
8. The foodstore car park hereby permitted shall not be open to the public more than 15 minutes before the foodstore opens or more than 30 minutes after it closes. (6)
9. The two shop units hereby permitted on the ground floor of the tower shall be used only for uses within Classes A1 and A2 of the Town and Country Planning (Use Classes) Order 1987 (or the equivalent classes in any Order revoking and re-enacting that Order). (7)
10. A minimum of 10% of the spaces in both the residential and foodstore car park shall be bays for the disabled. (9+10)
11. No doors or gates shall open over or across any road or footway. (12)
12. The parking, access, loading, unloading and manoeuvring areas shown on the application plans shall be retained for and used only for those purposes. (13)
13. No works on any phase of the development hereby permitted (as defined in condition 3 above and including the foodstore) shall take place before details of cycle parking relevant to that phase have been submitted to and approved in writing by the local planning authority. The approved cycle parking shall be provided prior to that phase coming into use and be retained thereafter for that purpose. (14)
14. No works on any phase of the development hereby permitted (as defined in condition 3 above and including the foodstore) shall take place before details of access for the disabled, as they relate to that phase, have been submitted to and approved in writing by the local planning authority. The details shall include:

- details of all thresholds;
- plans, elevations and sections of the relevant parts of the development at a scale of 1:50;
- details of all doors and handrails.

Development shall be carried out in accordance with the approved details. (15)

15. Notwithstanding the information shown on the application plans, no works on any phase of the development hereby permitted (as defined in condition 3 above and including the foodstore) shall take place before details of refuse storage have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. (16)
16. No works on any phase of the development hereby permitted (as defined in condition 3 above and including the foodstore) shall take place before details of a security scheme have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. (17)
17. No development shall take place until the applicant, or its agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. (18)
18. No demolition work on nos. 285-289 Edgware Road shall take place before details for the support, protection and making good of no. 283 Edgware Road and no. 5 Newcastle Place have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details. (19)
19. No development shall take place before full details of hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These works shall be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme first agreed in writing by the local planning authority. (20)
20. A scheme of public art within the site of the development hereby permitted shall be submitted to the local planning authority within six months of the commencement of development. The art, as approved, shall be provided before any part of the development is brought into use, unless the local planning authority gives written consent to any variation. (21)
21. No works on any phase of the development hereby permitted shall take place before details of the following, as they relate to that phase, have been submitted to and approved in writing by the local planning authority:
 - a centralised satellite dish and TV system to serve the whole of the development;
 - window cleaning methods and equipment;
 - measures to address the impact of the proposed tower on TV reception in the area.Development shall be carried out in accordance with the approved details. (22)
22. No works on the foodstore hereby permitted shall take place before details of a ventilation system to serve it have been submitted to and approved in writing by the local planning authority. The details shall cover its design, supported by an acoustic report, its installation and any associated plant. The system shall be installed in accordance with the approved details. (23)
23. No works on the foodstore hereby permitted shall take place before details of sound insulation measures to prevent noise transmission from the service area to the flats above have been submitted to and approved in writing by the local planning authority. The measures shall be implemented in accordance with the approved details. (24)
24. No works on the foodstore hereby permitted shall take place before details have been submitted to and approved in writing by the local planning authority which ensure that the plant, turntable and mechanically operated doors for the service area will not at any time generate noise exceeding the background noise level outside the nearest residential unit. Development shall be carried out in accordance with the approved details. (25)

25. No machinery or associated equipment, ducts, tanks, satellite dishes or radio aerials shall be installed on the roofs of any of the buildings hereby permitted without the prior written consent of the local planning authority. (26)
26. All plant and machinery associated with the development hereby permitted shall be installed and operated so as to ensure that no perceptible noise or vibration is transmitted through the structure to adjoining premises. (27)
27. No development shall take place before details of all foundations and groundworks in relation to the nearby London Underground tunnel have been submitted to and approved in writing by the local planning authority. (28)

Additional condition should the Secretary of State consider that foodstore car parking should be limited to avoid the need for a right-turn stage at the Church Street signals.

28. No more than 180 spaces shall be provided in the foodstore car park. (10)

Additional condition should the Secretary of State consider that Building E2 should be less tall:

29. Notwithstanding what is shown on the application plans, Building E2 shall be designed and erected in accordance with the details shown on drawings nos. 0203[15.1]P142A, P143A, P144A, P145A, P146A, P151A, P154A and P164A.

ANNEX G – ABBREVIATIONS used in this report

ADF	Average Daylight Factor
BRE	Building Research Establishment
CABE	Commission for Architecture and the Built Environment
CBP	Colin Buchanan and Partners, consultant to TfL
EH	English Heritage
GLA	Greater London Authority
GU	Grand Union (as in GU Tower)
hgv	heavy goods vehicle
LOS	level-of-service (relating to pedestrian movement)
PSPA	Paddington Special Policy Area
PCT	Primary Care Trust
pcu	passenger car unit
PRACT	Paddington Residents' Active Concern on Traffic
PSPA	Paddington Special Policy Area
PTAL	Public Transport Accessibility Level
SBA	Savell Bird & Axon, consultant to Sainsbury's on highways matters
TA	Transport Assessment
TfL	Transport for London
TLRN	Transport for London Road Network
UDP	Unitary Development Plan
VSC	Vertical Sky Component
WCC	Westminster City Council