

**RE: LAND AT PLOT C02, LIVERPOOL WATERS, JESSE HARTLEY,  
WAY CENTRAL DOCK, LIVERPOOL, L3 OBT**

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**CLOSING SUBMISSIONS OF THE LPA**

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**INTRODUCTION**

1. This appeal against non-determination<sup>1</sup> concerns an application for the partial infilling of the West Waterloo Dock and construction of a new residential development<sup>2</sup> with supporting commercial floorspace and enhanced public realm within the Central Docks of Liverpool Waters ("the Application")<sup>3</sup>.
2. On 18<sup>th</sup> January 2022, the Application was reported to the Planning Committee for a putative determination. In the light of the Interim Chief Planning Officer's recommendation that the development should be refused (CD 3A.1), the LPA resolved to oppose the Appeal for 3 reasons.
3. The lengthy planning history is set out in the SoCG (CD 7.41 at 3.1 *et seq*). The Liverpool Waters outline planning permission (LW OPP) has been updated by three non-material amendment (NMA) applications<sup>4</sup>. The

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<sup>1</sup> The Application was made by Romal Capital Ltd on 4th February 2021. Amendments to the scheme were made and the re-consultation period on these amendments was due to close on 30<sup>th</sup> December 2021. However, the Applicant lodged an appeal against non-determination on 23<sup>rd</sup> December 2021.

<sup>2</sup> three blocks, 4-9 storeys creating 330 residential units.

<sup>3</sup> A full description of the development is contained in the SoCG (CD 7.41 at 4.1 *et seq*). The agreed plans for determination can be found at CD1A. An EIA supported the application (CD 1.4-1.31). Whilst the LPA do not agree with all of the judgments within the EIA, the LPA consider that a lawfully adequate EIA has been undertaken.

<sup>4</sup> The LW OPP (10O/2424) establishes the principle of development at Liverpool Waters, comprising 60 hectares of formal dockland, consented in June 2013. The first NMA (18NM/2766)

Central Docks Neighbourhood Masterplan (CDNMP) has been approved to discharge condition 11.

4. The LPA accepts (as it has always accepted) that the LW OPP establishes the principle of development (CD 7.3 LPA SoC at 18 and 51). A sufficiently high-quality design that did not prejudice the implementation of the wider scheme would be acceptable (CD 7.3 LPA SoC at 18). However, the LW OPP was consented on the basis of a number of controls over the future development, including condition 11 and the approval of the CDNMP. Whilst the NMA 3 post-dates the agreement of the CDNMP, an NMA does not result in a new permission. If there is to be a new CDNMP, a new application will be required over which the LPA have control (whether a fresh discharge of a condition or s.73 application or a new outline etc).
5. It is agreed that this proposal does not comply with the LW OPP. It is therefore made as a stand-alone application (see CD 3A.1 at 1.11). There is, however, no reason for a lower design standard to apply to this standalone proposal, compared to any RMA (XX of IF).

### **MAIN ISSUES**

6. There are 4 Main Issues<sup>5</sup> which reflect the reasons for refusal.

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amended the OPP to adjust for the relocation of the Cruise Liner Terminal, consented in November 2018. The second NMA (19NM/1121) amends the OPP to adjust for the Isle of Man ferry terminal, consented in August 2019. The Central Docks Masterplan was approved in November 2019 pursuant to C11 of the LW OPP (19DIS/1315). The third NMA to the LW OPP, consented in September 2020 (20NM/1801), replaces the Liverpool Waters Parameter Plan Report (April 2019) with Liverpool Waters Parameter Plan Report (July 2020).

<sup>5</sup> They have been discussed at the CMC and appear in the CMC Note (CD 7.43) at [4].

7. The Main Issues fall to be determined in accordance with the development plan unless material considerations indicate otherwise (s.38(6) P&CPA 2004).

### **THE DEVELOPMENT PLAN**

8. So far as relevant, the statutory development plan comprises the Liverpool Local Plan (2013-2033), adopted January 2022.
9. The Local Plan was examined in October 2020, consultations on Main Modifications took place in July/ August 2021 and the final Inspector's report was received in October 2021. This process post-dates the formulation of these proposals. The Appellant (and Landowner) therefore had every opportunity to object to the emerging Local Plan. The Local Plan is up to date and consistent with the NPPF. The contrary is not argued. The Local Plan policies should, therefore, be given full weight.
10. Following the evidence presented at the Inquiry, there are several areas of additional common ground. The Appellant's propositions 1 and 2 are agreed save the LPA is plainly not pretending that the vision, consent, and development plan policy does not exist.<sup>6</sup> This was the claimed fatal flaw in the LPA's case (Appellant's proposition 5), from which IP expressly resiled in XX.<sup>7</sup> On the contrary, the LPA consider the position under the development plan to be clear and the following is expressly agreed<sup>8</sup>:
  - (i) The most important policy is CC12. Planning applications within the LW area will be assessed against the provisions established in the OPP (as set out in the SoC at 15 CD 7.3);

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<sup>6</sup> See para 4 and XX of IP

<sup>7</sup> It should not, therefore, form any part of the Appellant's case in Closing

<sup>8</sup> See Appellant's Opening Proposition 1 and 2 and XX of IP

- (ii) CC12 indicates support will be given for proposals which deliver the vision for LW;
- (iii) CC 12 and 6.95 require compliance with all relevant policies;
- (iv) This proposal will be assessed utilising “the provisions established through the OPP” to ensure the proposal does not prejudice the delivery of the vision (see also Local Plan at 6.99).
- (v) The vision and the documents against which proposals will be assessed is set out in: (a) the development plan; (b) the OPP and the associated (c) parameters plans (as amended); (d) conditions; and (e) the approved CDNMP;
- (vi) The policy requires “comprehensive development” across 1.7m sq m of revenue generating floorspace (6.96);
- (vii) The CDNMP is the design code against which the proposal is to be tested. The general approach to good design is captured in policies UD1-5 and HD1;
- (viii) The OPP and its associated suite of conditions, parameters and masterplans is not a simple material condition. Rather, it drives the development plan consideration of the application.

### **MAIN ISSUE 1**

11. The first main issue concerns the impact of the proposal on the character and appearance of the local area, having regard to designated heritage assets, in the light of the relevant statutory and policy tests.
12. It is agreed that the site lies within the setting of the Grade II Listed Corn Warehouse at the East Waterloo Dock (EWD) and within the setting of the Stanley Dock Conservation Area (SoCG at 2.6).
13. The Grade II Waterloo Warehouse (WW) dates from 1867 and was formerly a corn warehouse. It is 6-storey in height, 43-bays in length, 5-

bays wide and of red brick construction with a granite base and limestone ground floor. It is approximately 170m east from the development site.

### **Statutory and Policy Background**

14. A number of matters of approach are agreed (XX of RB):
- Section 66 requires that, in considering whether to grant planning permission for development which affects a Listed Building (LB) or its setting, the decision maker shall have *special regard* to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses;
  - *Preserving* the setting of a listed building means ‘*doing no harm*’ (*Forge Field*<sup>9</sup> at [45] and [47]);
  - Where there is harm to a heritage asset, a decision-maker must give that harm “*considerable importance and weight*” when carrying out the HD1 and NPPF 202 planning balance exercise (*Barnwell Manor*<sup>10</sup>, *Forge Field*<sup>11</sup>). A less than substantial harm does not equate to a less than substantial objection;
  - A finding of harm results in *a strong presumption against planning permission* being granted (*ibid* at [49]);
15. In *Shimbles*<sup>12</sup>, it was held that when determining planning applications, decision makers were not obliged to place harm that would be caused to the significance of a heritage asset, or its setting, somewhere on a "spectrum" in order to give the necessary great weight to the asset's conservation. NPPF's division of harm into categories of "substantial" or

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<sup>9</sup> *R (oao The Forge Field Society) v Sevenoaks DC* ([2014] EWHC 1895 (Admin)).

<sup>10</sup> *Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG* [2014] EWCA Civ 137.

<sup>11</sup> *R (oao The Forge Field Society) v Sevenoaks DC* ([2014] EWHC 1895 (Admin)).

<sup>12</sup> *R (oao Shimbles) v City of Bradford Metropolitan District Council* [2018] EWHC 195 (Admin).

"less than substantial" was adequate to carry out the weighted planning balancing exercise. However, following *Shimbles*, NPPG was revised to require that the extent of harm should be clearly articulated.<sup>13</sup>

16. In *Hall*<sup>14</sup>, it was held that in the NPPF there are three clear categories of harm: substantial harm, less than substantial harm and no harm and that each of the categories will cover a broad range of harm. Low levels of harm will fall into the less than substantial category, including very limited or minimal harm (at [34]).
17. In *Kinsey*<sup>15</sup>, Lang J held that the PPG is only guidance and is not binding. However, it asks that a heritage decision maker articulate the extent of harm in each category. Where a decision is made to depart from national guidance, reasons should be given for doing so (at [89]). Neither party requests such a departure.
18. In a Conservation Area, s.72(1) requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of that area. There is no statutory duty to protect the setting of a Conservation Area. The NPPF makes the setting of a Conservation Area part of what may make it significant. This makes it significant in planning decisions because it makes such harm of equivalent importance, in terms of the justification required, to the setting of a LB (NPPF 194, 195 and 202). However, the NPPF does so as a matter of policy (not statutory duty) which does have different legal consequences (per Ouseley J in *Safe Rottingdean Ltd v Brighton and Hove CC* [2019] EWHC 2632 at para 88).

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<sup>13</sup> See "*How can the possibility of harm to a heritage asset be assessed?*", para. 018, Ref ID: 18a-018-20190723, revision date: 23072019.

<sup>14</sup> *R (oao James Hall and Co Ltd) v City of Bradford Metropolitan District Council* [2019]EWHC 2899 (Admin).

<sup>15</sup> *R (oao Kinsey) v Lewisham LBC* [2021] EWHC 1286 (Admin).

19. Significance can derive from setting and setting can be a component of significance. If there is harm to setting as a component of significance, then great weight should attach to that harm. This is true for both the SDCA and the Waterloo Warehouse (as RB agreed in XX). In *Irving*<sup>16</sup>, Gilbert J held that if there was harm to the character and appearance of one part of the conservation area, the fact that the whole would still have a special character did not overcome the fact of that harm. It followed that the character and appearance would be harmed. Although the question of the extent of the harm was relevant to the consideration of its effects, it could not be right that harm to one part of a conservation area did not amount to harm for the purposes of considering the duty under the Planning (Listed Buildings and Conservation Areas) Act 1990 s.72.
20. Several propositions are agreed regarding the WHS SPD:
- The WHS SPD can have weight as a material consideration;
  - Weight can be attached to the evidence and judgments informing the WHS SPD. They are conceptually different to matters of planning policy (which must have reduced weight in the light of the loss of WHS status);
  - No practitioner is so befuddled by the loss of status that this document does not remain a useful guidance document;
  - In particular the information at [4.7.1- 4.7.3, 4.7.6 and 4.7.7] (p.63 ID2 WHS SPD) contains judgments which remain valid;
  - The EIP/ LP Inspector did not consider it necessary for the soundness of the Plan to remove the references to the SPD (IR at 256);
  - The EIP/ LP Inspector though there was value in the SPD content and judgments provided that they were used with care by a competent professional mindful of the fact that the designation has been lost.

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<sup>16</sup> *R. (on the application of Irving) v Mid-Sussex DC [2016] EWHC 1529 (Admin).*

21. The Appellant has consistently alleged that the LPA's case is flawed because of its reliance on the SPD. In the light of the above agreement, such a contention cannot be supported. It is further alleged that the LPA has wrongly assessed the impact on heritage assets on the basis that they retain WHS status. That is an abject mischaracterisation of the LPA's case. There is no reference to WHS status *anywhere* in the Committee Report (see Conservation Officer response and 3.1-3.17 CD 3A.1). Far too much has been made of a reference to the words "principal guidance" in the evidence. JS expressly (and repeatedly) explained that he was fully aware of the WHS status. That is abundantly plain from his evidence, read fairly and in full.
22. Finally, the OPP concerned weighing the benefits of over 1.7m sqm of floorspace against the harm to numerous designated and non-designated heritage assets. Both the harm and the benefits were quite different. The impact of this proposal and these heritage assets was simply not considered (as a matter of fact). But even if it was, it was only consented subject to the conditions and masterplans with which this proposal does not comply. The grant of the OPP is therefore of limited weight in applying the HD1 and NPPF 202 balance.

### **Common Ground**

23. In that context, it is expressly agreed that (SoCG<sup>17</sup> at s.7):
- The proposal causes harm to the setting of the Grade II Listed Waterloo Warehouse;
  - The proposal causes harm to the setting of the Stanley Dock Conservation Area;

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<sup>17</sup> Updated SoCG is ID3.

- The level of harm would fall into the less than substantial scale on the spectrum of harm;
- NPPF 199, 200, 202 and 203 apply;
- The proposal does not cause any harm to any other *designated* heritage asset.

24. The area of disagreement for heritage purposes is therefore relatively discreet (SoCG<sup>18</sup> at 8.1.1):

*Whether or not the less than substantial harm to the setting and significance of the designated heritage assets, Waterloo Warehouse (grade II listed) and Stanley Dock Conservation Area, and the harm to the significance of the non-designated heritage asset, West Waterloo Dock, is justified and outweighed by the wider public benefits of the proposal, as per LLP policy HD1 – Heritage Assets and the NPPF (2021) para’s 202 & 203.*

### **Waterloo Warehouse**

25. The Waterfront is a major asset of significant architectural and historic importance. The city has one of the longest and most recognisable waterfronts in the UK, and it has the largest and most complete system of historic docks anywhere in the world. These points are noted in the description of the Waterfront and its Fringes (p.60 at [6.20] of the Liverpool Local Plan) and are not disputed by the Appellant (RB XX).
26. The Local Plan also notes that: *“the Waterfront is Liverpool's major asset and will continue to be one of the main opportunities to attract further investment into the City. It is of significant historic and cultural importance, and a major tourist destination due to attractions such as the Albert Dock, Museum of Liverpool and the Three Graces”* (p.88 at [6.92])

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<sup>18</sup> Updated SoCG is ID3.

of the Liverpool Local Plan). Policy CC10 refers to respecting the Waterfront's sensitive historic surroundings. The docks are self-evidently an intrinsic part of that value.

27. As the HIA recognises, Waterloo Warehouse is of "*high significance*" as one of the largest surviving warehouses within the dock system, it has a high visible presence from some vantage points across the river (CD 1.33 at [5.29]). As an 1860s former warehouse, Waterloo Warehouse is a tangible physical reminder of the buildings which characterised the Liverpool docklands during the 18<sup>th</sup>, 19<sup>th</sup> & early-20<sup>th</sup> centuries. It is a direct connection to Liverpool's maritime past.
  
28. Waterloo Warehouse has a visual prominence as viewed from the River Mersey. These views (whilst not designed and acknowledged by JS to be accidental and fortuitous) have subsequently become important and positively contribute towards the setting and significance of the Listed Building. The present view<sup>19</sup> of Waterloo Warehouse, a stand-alone remnant of Liverpool's maritime hegemony, has real significance. Although not designed as a landmark building, its setting has evolved, and it has become visually prominent from kinetic river views. Waterloo Warehouse is recorded as a "key landmark building" in the WHS SPD (ID2, P.48 at [4.4.5]) and the Liverpool Local Plan's key views (see App 3, views 2 and 3). Whilst the WHS designation has gone, the viewpoints and identified landmarks remain relevant, current and important. To suggest (EiC of RB) that the building is not a prominent landmark because of its design and materials is unanswerably wrong (whether in development plan terms or at all).

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<sup>19</sup> The Waterloo Warehouse has been a stand-alone warehouse for the last c.53 years. It has been visually prominent for the entire designation period of the Liverpool Mercantile Maritime City WHS (2004-2021).

29. WW is one of the largest surviving warehouses in the dock system. The Site sits within the foreground of WW (as viewed from river). There is an important relationship between the dock water spaces, quaysides and warehouses and they form the historic dockland that forms a crucial aspect of Liverpool's historic landscape and cultural heritage. Overall, they make a significant contribution to the city's sense of place.
30. The proposed development would obstruct key views of Waterloo Warehouse, obscuring Waterloo Warehouse along a stretch of the River Mersey. The proposed development will heavily screen the Waterloo Warehouse, having a harmful impact on its high visible presence. Views across the River Mersey are a fundamental part of the city of Liverpool's character. The Appellant's own evidence demonstrates as much (see ICOMOS Assessment Appendices, CD 1.34 – viewpoints 2 and 3).
31. Further, the riverfront positioning of the proposed development's 9-storey blocks will have a greater perceived height (as viewed from the river), competing and drawing undue attention away from the Listed Building.
32. Further, the East and West 'sister' docks and Waterloo Warehouse have an important relationship and group value. They form historic dockland that characterise the wider area. This is set out in the WHS SPD (at para. [6.4.2]): *"The docks that lie outside of the WHS but within the Buffer Zone, form part of the general dockyard landscape and contribute to the character of the WHS and wider city. They are broadly contemporary with those within the WHS, but have generally lost their historic dockside buildings and in some cases have been largely rebuilt"*. Such a relationship has not changed with the loss of WHS status.
33. Altering the proportions of WWD will devalue this relationship, making it more difficult to read the docks as sister docks, having a harmful impact upon the character of the area, in which one experiences and appreciates

both the docks and WW. This negative impact upon the group value of the heritage assets, indirectly causes harm to the setting of the WW. The position of the LPA is supported by Historic England (CD 2.3A) and local heritage groups. Significant weight should attach to HE's assessment and the resulting consensus of expert evidence with the LPA.

34. The LPA considers that less than substantial harm would be caused to the setting of the Waterloo Warehouse by the proposed development.
35. If it is necessary to quantify the level of harm further<sup>20</sup>, there is low - moderate harm to the significance of this grade II listed building. As such there is *prima facie* conflicts with policy HD1(1) and (2) and NPPF 202 is engaged. Considerable importance and weight should attach to such harm in the planning balance. There is a strong statutory presumption against the proposal.

#### **Stanley Dock Conservation Area (SDCA)**

36. The points regarding key views of the WW apply equally to the SDCA; as do the concerns about the impact on kinetic river views of the WW and its relationship with WWD and EWD as a group. The WW and EWD positively contribute to the character and appearance of the CA.
37. The proposed development will negatively impact the setting of the Stanley Dock Conservation Area causing less than substantial harm. If it is necessary to quantify the level of harm further (*ibid*), then the level is "low". Great weight should attach to such harm (NPPF 199).
38. It follows that there is less than substantial harm to the Listed Building to which considerable weight should attach (applying s.66 and NPPF 199).

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<sup>20</sup> This is the approach of the PPG, which post-dates the *Shimbles* case - see *R(Kinsey) v LB Lewisham* [2021] EWHC 1286 (Admin) and legal discussion above.

There is less than substantial harm to the setting of the conservation area, to which great weight should attach (NPPF 199). The balance in HD 1 and NPPF 202 is engaged and such harm should be weighed against the public benefits of the proposal. The LPA consider there is conflict with HD 1 and NPPF 202, once the balance is applied.

**Claimed Heritage Benefits**

39. There is no requirement in s.66(1) or in policy that a decision-maker must undertake a "net" or "internal" balance of heritage-related benefits and harm as a self-contained exercise preceding the wider balance envisaged by NPPF 202. However, the LPA agree (as a matter of principle) that the Inspector can lawfully choose to undertake such an exercise when performing the s.66 duty (*Bramshill* at para 71 *et seq*)<sup>21</sup>.
  
40. If the Appellant's position is that the harm to one part of the conservation area can somehow be averaged out across the area or that harm to one part of the conservation area only can be discounted (RB in Re-Ex), then this is wrong as a matter of law. Where there is harm to one part of the conservation area, the fact that the whole would still have a special character does not overcome the fact of that harm (*Irving*). Although the question of the extent of the harm is relevant to the consideration of its effects, harm to one part of a conservation area amounts to harm for the purposes of considering the duty (*Irving*).
  
41. The LPA does not consider that any claimed heritage benefits outweigh the identified heritage harm. Indeed, it is agreed in the SoCG that there is such harm (*supra*).

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<sup>21</sup> As has been made clear in opening and in evidence, the LPA does not consider that any claimed heritage benefits outweigh the identified heritage harm.

42. Contrary to the Appellant's evidence (RB at 5.1.12) neither the case law, the statutory tests or policy require that any heritage benefits are given "considerable weight or importance". Harm to the setting of a listed building is given considerable importance and weight because to do otherwise would be to breach the statutory duty (s.66 P(LBCA) Act 1990, see also *Forge Field, Barnwell Manor*). This does not apply in relation to the claimed heritage benefits.
43. Public accessibility to the setting of the Waterloo Warehouse may be a heritage benefit but it does not engage the statutory presumption and nor does it alter the significance of the heritage asset in terms of its historic, architectural, or aesthetic value. It is therefore wrong to consider all heritage benefit to be of considerable importance and weight. This error has informed RB's balance and his balance is therefore wrong (RB XX).
44. Further, the weight to be given to any public access has to be considered in the context of the loss of significance. Attaching weight to public access only makes sense as a proposition where the significance of the asset has been respected and preserved and the public accessing it are able to appreciate that significance.
45. As JS explained, whilst he can see the potential benefit of public access to the waterfront through a new public walkway, this comes at the expense of the setting to WW and altering the size and openness of WWD. It is therefore a very limited heritage benefit (at best) and not considered to justify the harm.
46. In terms of reinstatement and reforming the historic townscape, the Site has simply never had residential buildings of the proposed scale & mass (see JS early-C20<sup>th</sup> aerials). The Site had low level transit warehouse sheds. Buildings of scale were positioned away from river adjacent sites, mainly beyond Waterloo Road. The proposal is unanswerably seeking to

create a new townscape, not reform/recreate an existing or earlier one. The LPA accept the scale and mass of the proposed buildings in urban design terms as new townscape. However, there is no discernible heritage benefit (a view shared by the Georgian Group).

47. The residual harm to the designated heritage assets therefore remains of great weight (*supra*).

## **MAIN ISSUE 2**

48. The second main issue concerns the effect of the proposal on the significance of the non-designated heritage asset, West Waterloo Dock (WWD). It is agreed that the proposal involves the substantial infilling of the WWD. The LPA consider the dock is a non-designated heritage asset (NDHA).

49. WWD has been rebuilt and modified since its original 1836 and 1868 construction. Such changes excluded the dock from being Listed and resulted in it being located outside of the Stanley Dock Conservation Area. However, the WWD reinforces the character of Liverpool's North Docks and contributes to the character of the Stanley Dock Conservation Area and the wider city. Further, a heritage asset will inevitably be a product of its interventions (see IQ's of RB)<sup>22</sup>. Some of these interventions or evolutions are captured in the re-shaping of WWD (see ICOMOS Heritage Assessment CD 1.33, p.58 at [7.3-7.4]).

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<sup>22</sup> A point reflected in Article 11 of the Vienna Convention: "*The valid contributions of all periods to the building of a monument must be respected, since unity of style is not the aim of a restoration. When a building includes the superimposed work of different periods, the revealing of the underlying state can only be justified in exceptional circumstances and when what is removed is of little interest and the material which is brought to light is of great historical, archaeological or aesthetic value, and its state of preservation good enough to justify the action. Evaluation of the importance of the elements involved and the decision as to what may be destroyed cannot rest solely on the individual in charge of the work*".

50. The main parties disagree on: (i) whether the WWD is a NDHA<sup>23</sup>; and (ii) whether there is any harm to the significance of the NDHA. As RB agreed, both issues require an examination of the heritage significance of the WWD.
51. The test for being a heritage asset is having “*a degree* of significance meriting consideration because of its heritage interest” (per NPPF glossary). NPPG applies essentially the same criteria as NPPF. The issue (as RB agreed) is therefore whether WWD has *any* heritage significance which is material. For it not to be a NDHA, the Inspector must conclude it has *no significance* which even merits consideration. This is a low evidential hurdle which is clearly passed even on the Appellant’s analysis. RB had concluded that WWD has “*no material historic significance*”. That is simply not credible.
52. The issue is not process-driven.<sup>24</sup> Whilst the NDHA identification process may include producing a local list or plan making, RB conceded that it is acceptable for NDHAs to be identified as part of the decision-making process on applications (cf RB at 3.1.11)<sup>25</sup>.

### **The Development Plan**

53. The significance of the WWD is clear from the statutory development plan. There has been no criticism of it from the Appellant. Read fairly, the Local Plan identifies the waterfront and dock within the waterfront as having significant historical and cultural value (see 6.20, Policy CC10 and 6.92). The Waterfront is a major asset which has “significant historic and

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<sup>23</sup> Surprisingly RB’s position is that it is not even a NDHA

<sup>24</sup> See NPPG para.40, Ref ID: 18a-040-20190723, Revision Date: 23 07 2019.

<sup>25</sup> See final paragraph in NPPG para.40, Ref ID: 18a-040-20190723, Revision Date: 23 07 2019: “In some cases, local planning authorities may also identify non-designated heritage assets as part of the decision-making process on planning applications”.

cultural importance”. RB accepted that the Plan is specifically identifying the this area of the Waterfront as being of historic and cultural value. Self-evidently (RB accepted) the docks and the open water spaces are intrinsic to that value. WWD unanswerably has *a degree* of significance meriting consideration because of its heritage interest.

54. Further, Policy HD1 (2)(a) particularly notes that the docks are an element of the historic environment which contributes most to the City’s distinctive identity and sense of place because they, in common with other maritime structures, are “*associated with the City’s role as one of the World’s major ports and trading centres in the 18th, 19th and early 20th Centuries*”.
55. In XX, RB agreed that if the Inspector concluded that WWD (or WW or the SDCA) is “associated with” the City’s role as a port and trading centre in the 18<sup>th</sup>, 19<sup>th</sup> and early 20<sup>th</sup> Century, then it falls to be considered as one of the elements of Liverpool’s historic environment which “contribute most” to the city’s distinctive identity. Accordingly, it is agreed that the key issue between the parties on the significance of WWD is whether it has such an association. The LPA submit that (on the evidence) such an association is unanswerable.
56. Indeed, RB conceded that it was not his evidence to assert that the docks had “no association with the City’s role as a major world port”. Rather, the alterations after 1949 to WWD fell outside the relevant timescales (the 18th, 19th and early 20th Centuries). That is far too narrow a view on whether WWD has such an association and expunges any pre-1949 heritage value in the dock because of changes which took place as part of the natural organic growth of the dock network. It is impossible to assert simultaneously that there is no association with the 18th, 19th and early 20th Centuries, whilst accepting that the WWD is part of the Liverpool narrative (RB at 3.2.3).

57. The Plan repeatedly recognises the heritage significance of the docks and waterfront<sup>26</sup>. For example, in the context of Policy GI 5 Water Spaces, the Plan states (at [12.24]): “...*The River Mersey, the Leeds Liverpool Canal and the docks along the Waterfront are the most significant water spaces in the City, and reflect the City’s maritime heritage, having played an important role in its growth and development as a key port*”.
58. When referring to Liverpool’s historic development the plan records (at [3.8] *Liverpool Historic Development*): “*The docks warehouses, commercial and civic buildings and structures resulting from Liverpool’s dominant role in trans-Atlantic trade during this period make a significant contribution to the distinctive character of the City today*”. The significance is recognised on an international level: “*The City has one of the longest and most recognisable waterfronts in the UK, and it has the largest and most complete system of historic docks anywhere in the world*” (at [6.20]).
59. The WWD is unanswerably a NDHA with a degree of significance. Further, it is an asset which contributes most to Liverpool’s distinctive identity in the terms of the statutory development plan. The submitted evidence corroborates this position.

### **Analysis of Significance**

60. Unsurprisingly the same point appears in the ES: “*One of the key attributes of Liverpool, and a fundamental reason for the inscription of the WHS, is the presence of the docks. At their peak the operational docks ran for c.12km north to south along the Mersey waterfront, and were a feat of engineering marked by innovative water management techniques and advances in cargo handling, that made them the most effective docks of the period*” (CD 1.4, ES Vol 1 p.195 at [9.5.1.1]). The ES advises, regarding WWD: “*Alongside*

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<sup>26</sup> See, by way of example: HD1 (above), p.32 at [3.29], p.33 [3.36], p.60 [6.21-6.28], p.67 first bp “historic docklands”, p.88 at [6.92], p.239 at [12.24].

*Princes Dock, Waterloo Dock was used as a berth for trans-Atlantic packet ships, and played a role in Liverpool's migration trade” (CD 1.4, ES Vol 1 p.197 at [last sentence, bottom of page]).*

61. WWD has historic interest, historic association, communal value and important group value with EWD and Waterloo Warehouse, the SDCA and the wider Liverpool Docks. It was first laid out by Jesse Hartley exemplifying innovative dock technologies of the period. It has links to global trading and cultural connections to the British Empire, notably Irish immigration to North America and is an example of the evolution of docks and the changing requirements of dock water spaces in the C19th and C20th.
  
62. Whilst the WWD has altered in form over the years, it retains a considerable degree of significance meriting consideration. Indeed, the fact that RB had so much to say about the communal value (RB at 3.2.12), evidential value (RB at 3.2.3), aesthetic value (RB at 3.2.10) and historic value (CD 1.4 p.195-199) clearly evidences that remaining degree of significance remains. RB agrees *inter alia*:
  - The site is part of the larger dock network and a fundamental feature of the city's identity (RB at 3.2.12);
  - WWD and its immediate environ are a tangible manifestation of the network of dock spaces, systems and associated structures which helped to make Liverpool the second port of Empire (RB at 3.2.3);
  - The water spaces are part of the industrial character and help to define the area. They therefore have an aesthetic value (RB at 3.2.10).
  
63. The East and West Waterloo docks were created at the same time and there is a clear spatial and historic similarity, which can be experienced today (JS App K). They have a visual relationship forming a contiguous

water space with the dock (RB XX). There is a spatial association due to proximity (RB XX). The fact that the docks had different functions over time does not mean that there is no relationship. The ES sets out the relationship at the point of construction: “*Waterloo Dock was re-developed in 1868 following the repeal of the Corn Laws, and this allowed the Dock to become the world’s first specialist grain dock. From its original 5-acre space, the new dock was completely re-orientated, and two basins were constructed, on a north-south axis, and named Waterloo Docks East and West*” (CD 1.4, ES Vol 1 p.198 at [above diagram]). There is a visual relationship with the remaining warehouse and the WWD.

64. WWD has a clear association with seismic events in British history. There is a clear association with the role of the historic docks, which has not been erased by post 1949 changes to the physical fabric of the dock.

### **Impact**

65. The proposal to infill ~49% of West Waterloo Dock will fundamentally change the appearance of the dock. The level of infill is substantial, the overall width of the water space will be halved. It will no longer appear as an open dock water space, but a canalised waterway or narrowed channel, harming its significance. This view is consistent with the views of Historic England, as the expert statutory body, whose consultation response considers that: “... *the proposed amount of infilling would result in a water body more akin to a canal basin, greatly reduced the volume of water appreciable.*” Significant weight should attach to such a consensus of professional evidence between JS and HE.
66. The logic of the HIA is also that a reduced narrowed channel will clearly impact on significance (see ICOMOS Heritage Assessment CD 1.33, p.58 at [7.3-7.4]). The HIA is premised on the basis that a narrow channel is of less significance than an open dock water space. Such a proposition is

compelling. RB's assessment (now) that WWD will be retained as an open dock water space is irreconcilably inconsistent with his previous judgment that the impact was acceptable because the dock was a narrow channel. The LPA's case is far clearer: WWD is currently an open dock and will become a narrow channel. There is a significant direct impact on its significance as a result (consistent with RB's previous analysis).

67. The WHS SPD (at [6.4.12]) notes that infill of dock water is to be avoided. Partial infill of WWD Dock fails to protect the integrity of the dock water space, causing harm to the relationship between the sister docks, harming the local historic environment. The WHS SPD notes (at [4.7.2] and [4.7.3]) that: "*It is essential that the fundamental integrity of the docks as open water spaces is retained ... The retention of the contributions of the docks as focal points, to setting and openness is critical in both heritage conservation and urban design terms.*" That judgment is not undermined by the loss of WHS status.
68. The effect of the proposal on the WWD (as a NDHA) must therefore be taken into account. A balanced judgment is required having regard to the scale of any harm and the significance of the WWD (NPPF 203). The LPA consider there to be a high level of harm to the significance of the WWD as a NDHA (JS at 5.31). On the evidence, that has to be correct.

### **MAIN ISSUE 3**

69. The third main issue concerns urban design. The LPA consider that the proposal constitutes poor design which will have an unacceptable impact on the proposed Cultural Square, contrary to the vision for the Liverpool Waters Central Docks.

### **The Development Plan**

70. Policy CC12 requires planning applications to deliver the vision for LW, which is to regenerate a 60ha historic dockland site to create a *world class, high quality, mixed-use waterfront quarter in central Liverpool* that will allow for substantial growth of the City’s economy (CD 4.12). It is agreed that the policy is intentionally setting a very high standard for design, comparable with Hamburg, Toronto and Barcelona (XX of MAS).
71. The overall ambition for LW is a “*comprehensive transformation of the city’s northern docks ... to create a world class, high quality, mixed use waterfront quarter ... over the next 40 years*” (CD 4.12 at 6.96). It is agreed that the policy is not considering development plots in isolation. Rather, the Plan considers each plot as part of a *comprehensive world class transformation* (XX of MAS). The OPP seeks to deliver 1.7m sq m of floorspace. It is agreed that this is “*a vast amount of revenue generating floorspace*” across the Waterfront (XX of MAS). The Plan period runs to 2033, with Central Docks phased for development to 2036. Wider delivery is phased to 2062 (40 years from adoption). The development plan is not looking for a quick fix. Rather, it is demanding enduring world class design quality (XX of MAS). Self-evidently, it is vital that early phases set the design quality at the appropriate world class standard.
72. The Plan recognises that detailed masterplans (MP’s) have been prepared by Peel (CD 4.12 at 6.99). The Plan requires that RMA’s and other standalone applications “*will also be assessed utilising the provisions established through the outline permission*” (CD 4.12 at 6.99). It is agreed that the provisions of the OPP include the conditions and the approved Central Docks Masterplan (XX of MAS). It is necessary to assess such standalone applications to ensure they don’t prejudice the delivery of the vision (CD 4.12 at 6.99). It is therefore agreed that this proposal shall be

tested against the provisions of the OPP, the conditions and the approved CDNMP (XX of MAS).

73. Policy CC 10 requires that all development on the Waterfront should be of a high-quality design that respects its sensitive historic surroundings, whilst making adequate provision for access, parking and servicing (XX of MAS). Policies CC10 and CC 12 therefore need to be interpreted and applied together. Policy CC10 places an emphasis on high quality public realm because the Waterfront is “*Liverpool’s major asset*” and “*one of the main opportunities to attract further investment into the City*” (CD 4.10 at 6.92).

74. Whether a proposal is “*world class*” requires the exercise of a *subjective* judgment, which can be exercised against *objective* criteria. It is agreed that the design policies include the following relevant objective criteria to be considered (XX of MAS):<sup>27</sup>

- Ensure high quality sustainable design (CC 10(f));
- Ensure inclusive and usable public realm (CC 10(k));
- Incorporate appropriate landscaping (CC 10(l));
- Consider the means of enclosure between spaces and built form (UD 1(b));
- Consider building frontages, compositions and building ensembles and nodes (UD 1(d) and (h));
- Enclosure, continuity and cohesion are key elements in street and space design helping to define the public and private realm (UD 2 (b) and (e));
- Car parking must be designed in a positive manner and integrated into the development (UD 2(j) and UD 3(e));

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<sup>27</sup> NB – this list does not include *all* of the policies which TE and MAS agreed to be relevant

- Development must ensure that active frontages are provided onto all public realm to ensure natural surveillance over these spaces (UD 2(n));
- Development should be designed from the outset as a “*whole landscape*” with consideration given to the external spaces and elements equal to that for the buildings (CD 4.5 at 10.9);
- All new development must demonstrate that the building has appropriate active frontages onto the public realm (UD 5(a)).

75. The Urban Design policies (UD 1 – UD 5) require high quality design from *all* development (CD 4.4 at 10.2). High quality design is, therefore, a minimum requirement. The Plan is demanding a higher standard in respect of the world class Liverpool Waters. It is agreed that the Plan demands (unashamedly) “*excellence*” (XX of MAS). If the design of this proposal fails to meet the policy criteria and, thereby, fails to demonstrate excellence, it is contrary to the up to date statutory development plan.

76. The Appellants argue that such a refusal would frustrate the delivery of the Vision. Ignoring that the Appellant is unable to identify a single development which would fail to come forward should consent be refused (XX of IF), it is self-evident that a refusal would frustrate the delivery of *any* development. Such a self-serving proposition pulls itself up by its own bootstraps. Further, the Plan is not looking for *any* development now. It seeks a world class development. Accordingly, poor design solutions do not further the delivery of the Vision, they are inconsistent with it.

### **The NPPF**

77. The NPPF strongly supports Plans which contain a clear design vision and clear expectations for developers and local communities (127). It is agreed that the development plan is up to date and consistent with the

NPPF (XX of MAS). The creation of high quality, beautiful<sup>28</sup> and sustainable buildings and places is fundamental to what the planning process should achieve (126).

78. The NPPF strongly supports the use of design codes prepared at a neighbourhood or site specific level, based on effective engagement between the landowner/developer, the LPA and local community ((128) and (129)). It is agreed (XX of MAS) that the purpose of such design codes is:

- (i) To improve the quality of development;
- (ii) To improve the quality and consistency of decision making, for the benefit of developers, LPA's and local communities; and
- (iii) To give LPA's a robust basis for refusal where there is conflict. This is a central part of the rationale for the changes between the NPPF (2019) and NPPF (2021).

79. The NPPF is unequivocal: development that is not well designed should be refused, taking into account local policies and local design guidance/design codes (NPPF 134). In particular, LPA's should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (NPPF 135). This has a particular resonance here, where the LPA is concerned that the vision is being watered down by stand alone applications.

80. Consistent with CC12 and CC10, the NPPF looks over the long term. Decisions should ensure that developments will function well and add to the quality of the area, not just over the short term but over the lifetime of

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<sup>28</sup> Reflecting the Government's up to date imperative to deliver beautiful places.

the development (NPPF 130(a)). MAS accepted that the lifetime of this proposal will be over 100 years. It is imperative, therefore that the proposal delivers a world class design for such a period.

81. In the light of a detailed examination of national and local policy, it must be noted that neither viability nor deliverability are relevant considerations in assessing whether a proposal delivers a high quality and world class design. It is unlikely that anybody would design a building which was unviable or undeliverable. Accordingly, as TE explained (EiC of TE), viability considerations may be relevant to the design brief but they are not material to an assessment of the acceptability of the design. Otherwise, poor quality design could be excused and the aim to deliver enduring beautiful places would be frustrated. Indeed, MAS conceded that (in XX):

- There is nothing in local or national policy to support the proposition that poor design can or should be excused by viability of deliverability considerations;
- It is not his evidence that poor design should be excused or outweighed by viability/deliverability considerations;
- Whilst he would only design a building which could be built, if the result constituted poor quality design, he would expect it to be refused (consistent with NPPF 134).

**The Liverpool Waters Outline Planning Permission (LW OPP)**

82. The LW outline application was supported by *inter alia* an illustrative MP (CD 5.2), the Building Characterisation and Precedent Study (Nov 2011) (BCPS CD 5.16) and the Public Realm Characterisation and Precedent Study (Nov 2011) (PRCPS CD 5.17). The Appellant places significant

reliance on such documents.<sup>29</sup> In 2011, the Cultural Square (CSq) was defined by a centrally located Cultural Building (see p.48 CD 5.17). The PRCPS nonetheless requires the CSq to be defined by: (i) world class architecture; and (ii) a world class landscape (CD 5.17 p.48).

83. The OPP was granted in June 2013 (CD 5.1). Whilst there have been 3 NMA's, it is agreed<sup>30</sup> that there is a single consent. The proposal includes for *formation of public spaces and public realm works* (CD 5.1 p.1). Consent is granted in accordance with the submitted application (CD 5.1 p.2). The application has therefore been incorporated by reference (*per Keene J ex p Shepway*).
84. Condition 4 (C4) requires the RMA's to conform generally with the parameter plans. No RMA shall be submitted for any development which exceeds the building heights specified in parameter plan 006 (as amended by the RMA's). It is clear, therefore, that the building heights are maxima (EiC of AB). A building which complies with the maximum building heights can be acceptable. However, the OPP needs to be interpreted and applied as a whole (EiC of AB and XX of IP). Any RMA building which complies with the maximum building heights also needs to comply with all of the conditions. You cannot argue that the desire to build up to the maximum building height means that you cannot comply with other conditions.
85. C11 requires Detailed Neighbourhood Masterplans (NMP's) to be submitted to and agreed in writing with the LPA. Thereafter: *All reserved matters applications shall be in accordance with the approved Detailed Neighbourhood Masterplans* (see C11).

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<sup>29</sup> It should be noted that the proposals for the CSq have evolved and that the PRCPS and BCPS were specifically taken into account in the formulation of the CD NMP, through the requirements of condition 4.

<sup>30</sup> Appellant Opening at para 24.

86. In producing the NMP's, the 22 requirements of C11 need to be addressed. These include: (iv) a list of Key Design Principles; (v) a Design Code reflecting the details outlined in Schedule 4 of the permission that will establish the design criteria and objectives for all development; and (xiii) provision of key open space and linkages informed by Schedule 5. The CD NMP is, therefore, agreed to be the Design Code for the Central Docks Neighbourhood, specifically in accordance with the approach endorsed by the NPPF (XX of MAS). It is, therefore, a forensic document which forms part of *the provisions established through the outline permission* (as accepted by MAS and IF). This proposal should, therefore, be tested against its provisions (applying the NPPF *supra*).
87. Schedule 4(1) requires that the CD NMP to be a set of illustrated design rules and requirements building on the agreed vision, the application documents and the SKDP, BCPS, PRCPS and the DAS. The CD NMP is, therefore, intended to be the latest and up to date iteration of the vision, against which proposals can be tested. The CD NMP specifically considered building frontages, open space, public space and car parking (as a requirement of Schedule 4).
88. To the extent that viability and deliverability is relevant, it is relevant to the formulation of the Design Code rules and requirements. Viability and deliverability are *not* relevant to a consideration of whether the proposed design is in accordance with the approved Design Code or NMP. There is nothing in policy or guidance to support that proposition (*supra*).
89. Schedule 5 provides that CSq shall be provided at the same time as any cultural buildings are constructed within development parcel 3c and completed before the opening of the Cultural Building. This is the only

trigger. There is, therefore, no timescale for the delivery of the Cultural Building or the CSq in the next 40 years.

90. It is agreed that this is not a proposal for RMA. It is a standalone application. However, the development plan is clear (*supra*) that standalone applications: “*will also be assessed utilising the provisions established through the outline permission*” (CD 4.12 at 6.99). That is consistent with the requirement for a comprehensive transformation. The approach is agreed (XX of MAS). It is also agreed that the provisions established through the outline permission include the provisions of the approved CD NMP.
91. The development plan and the NPPF therefore requires this proposal to be assessed utilising the provisions of the approved CD NMP as a Design Code.

**The Central Docks Neighbourhood Masterplan (CD NMP)**

92. After considerable engagement with the LPA and other stakeholders, the CD NMP was published in Sept 2019 and condition 11 was discharged (CD 5.9).
93. There is not (and nor has there ever been) any evidence (or suggestion) that the detailed scheme promoted in the CD NMP was not viable or deliverable either across the whole of the Central Docks area and/or across the whole of the 60 ha LW site (EiC of AD). On the contrary, it is reasonable to conclude that this scheme was viable and deliverable, as well as acceptable in design terms. In XX, IF conceded that Peel have not suggested in evidence that (i) an RMA compliant scheme cannot be submitted and approved; and (ii) the masterplan is not viable (taking account of development across the LW area). Indeed, it would be perverse for an experienced local developer to promote a detailed masterplan unless

they knew it was viable. Were they to do so, it would bring into question whether the OPP was actually deliverable, such that it could have limited weight in the determination of this and all other applications.

94. The CD NMP was being prepared at the same time as this application. Pre-apps commenced in 2018 (MAS at 4.1.2). This included extensive public engagement, including with Peel (XX of MAS). The application for 646 units was submitted at the end of 2018. The first NMA was granted (16/11/98) at approximately the same time the first application was submitted. The second NMA was approved on 23<sup>rd</sup> August 2019, before the CD NMP was published (Sept 2019), at around the time the second design was formulated in November 2019 (MAS at 4.2.1). Amendments to the planning application thereafter took place in the light of the published CD NMP. It follows that, at all material times, the applicant developer was fully aware of the CD NMP. Indeed, Planet-IE were involved in advising both Peel (for the CD NMP) and the Appellant. At no stage has Peel advised the LPA that the CD NMP is unviable or unworkable (EiC of AD). There is no evidence to that effect from Peel. The only evidence they have submitted is IF's App 2.

95. The CD NMP makes clear that (CD 5.9):

- (i) The primary purpose of the document is to provide a detailed masterplan of the neighbourhood (p.6);
- (ii) The document provides a clear direction for the component schemes that sit within it (*ibid*);
- (iii) The MP discharges C11 in relation to the Central Docs neighbourhood (*ibid*);
- (iv) The aspiration for this NMP is to guide the design, land use and associated infrastructure of *all future development within the Central Docs neighbourhood (ibid)*;

- (v) The spatial framework established by the LW OPP demands high minimum standards for future development within Central Docks. RMA's are required to accord with the general principles outlined within this NMP. These are included to ensure design standards are achieved to reflect the status of Central Docks along Liverpool's celebrated waterfront (*ibid*);
- (vi) A vision for the future Central Docks is presented. The document presents individual design principles for the remaining undeveloped plots across the masterplan. These development briefs for a spatial framework and design guidance for each of the remaining undeveloped plots (*ibid*).

96. The Appellant relies heavily on that part of the NMP (p.6) which explains that RMA's will be considered in the light of the approved masterplan and the LW OPP: "*The LPA must then consider each RMA on an application by application basis and consider in planning terms whether the application complies with the context of the masterplan and conditions on the LW OPP or whether any deviation is justified*". This does not mean that any RMA which deviates from the CD NMP complies with the CD NMP (if it is justified). Such an approach would be contrary to the development plan (policy CC 12 and 6.99) and contrary to the express wording of condition 11. Rather, it means that there may be material considerations which justify the conflict with the CD NMP and the resulting breach of development plan policy. This requires the exercise of a planning judgment, considering the extent of the breach of the CD NMP and the justification for it. For the reasons given above, the viability concerns of an individual applicant are not considered to be a justification to depart from the established Design Code.

97. Accordingly, whilst it is accepted that this is a standalone application, there can be no reasonable dispute that the CD NMP is a highly material

consideration, which forms an objective basis against which to audit and assess the acceptability of the proposal's design and compatibility with the vision for a comprehensive transformation of the CD area. Such an approach is entirely consistent with the development plan and the NPPF.

98. It is noteworthy, therefore, that whilst MAS and DM made reference to the provisions of the CD NMP, their analysis is deeply flawed, as (i) it fails to identify the relevant principles and (ii) fails thereby to assess compliance with the CD NMP (either adequately or at all). Indeed, DM expressly conceded that he had not assessed his landscape design against the key principles for an active primary frontage (XX of DM).

99. The CD NMP provides *inter alia* as follows:

- Cultural Sq is defined as wrapping around the northern elevation of plot CO2 (p.161 and p.163);
- The defined areas of Public Open Space (POS) are *critical* to enhance a sense of place and provide a number of social, environmental and economic benefits to the local community and beyond (p.160);
- CSq is defined as an important “node” in the CD neighbourhood because it is a destination for tourists, a resource for residents and an asset to the neighbourhood. It is a “destination point” in Central Docks (p.163);
- Plots CO2 and CO3 must “*positively engage with Cultural Square*” (p.262) and provide views across the CSq (see fig 12.4.1 p.263);
- The northern elevation of Plot CO2 must “*animate*” the CSq (p.264 and Fig 12.4.2 p. 265);
- The frontages facing CSq are “*the most prominent*” and animation along the ground floor is required to contribute to the welcoming environment of the public realm. Animated ground floor uses should be carefully located to correspond and animate, with architecture

designed to blur the threshold between inside and outside (p.272 and p.100);

- The northern elevation of plot CO2 is therefore designated as a Primary Frontage. The east and west elevations are secondary frontages (p.273);
- The limitation of blank elevations and obscuring materials is particularly required along primary frontages (p.272);
- The northern elevation has an indicative ground floor retail use and residential use, in order to provide animation for the primary frontage (p.275);
- Animated frontages to the public realm are *vital* to the success of the neighbourhood (p.100);
- Primary frontages must create a positive interaction between built form and the public realm (p.100)
- ***Primary frontages must not be compromised by large areas of surface car parking, or long frontages with no access or interaction with the adjacent public realm. Similarly, no service or car parking access is anticipated to be delivered along a primary frontage*** (p.100).
- The delivery of 2,000 car parking spaces across the CD area needs to be in accordance with the frontage principles and strategy *supra* (p.98);
- In setting such design principles, it is clear from the CD NMP that the Landowner and Planit were aware of the tunnel easement and the requirement for infill of the WWD, if parcel 3c is to be created

100. Accordingly, whilst the design of the CSq and Cultural Building has not been finalised, it is clear that the relationship between the northern elevation of CO2 and the Cultural Sq has been given a great deal of detailed consideration. In the light of the CD NMP provisions (see p.98), MAS conceded that:

- The CD NMP has tested the car parking strategy across the whole Central Docks area;
- In contrast, the Appellant has considered parking on a plot specific basis;
- No underground parking was proposed in the CD NMP;
- A key external issue was the City Regional Mayor’s zero carbon city by 2040 deadline. This is 4 years beyond the (then) phasing of the CD area and therefore *has potential to be in operation shortly after occupation of the final buildings*;
- The revised car parking strategy is Fig 7.13 (p.99);
- 2,000 spaces are proposed to be delivered *in accordance with the frontage strategy*, without causing harm to the sense of place;
- There are no exceptions or caveats, on the grounds of viability;
- Accordingly, a greater design priority is placed on the frontage strategy than provision of car parking where they conflict;
- Plot specific parking will be “topped up” through multi-storey parking (MSCP) at locations 1 (1,000 spaces and 2 (500 spaces) (see p. 98/99).

101. The LPA considers that all of these key design principles reflect good design guidance (see evidence of TE). There is no reason to revisit them in the light of NMA 3 (ReX of TE). Indeed, Peel (as Master Developer) has not requested revisions to the CD NMP in the last 3 years and the LPA would not accept changes which resulted in a poor quality relationship between CO2 and the CSq, given its central importance to the CD neighbourhood. NMA 3 was consented as being non-material, in the light of the extant CD NMP. The resulting OPP requires compliance with the parameters plans and the CD NMP.

102. The Appellant repeatedly asserted that the CD NMP is out of date. However, in XX, IF conceded that:

- (i) It was necessary to examine which parts of the NMP would be out of date and why;
- (ii) The LPA was concerned with the interface between the northern elevation and the CSq;
- (iii) From 2011: the importance of CSq has not changed or been diluted;
- (iv) The proposed use of the CSq as a “destination” or “node” has not changed or diminished;
- (v) The requirement for a high quality design and world class vision has not diminished;
- (vi) The requirement for a high quality interface between the northern elevation and CSq has not changed or diminished (“the vision is still there”);
- (vii) The principal change or justification for the change has been viability considerations.

103. On that agreed basis, the CD NMP is not (even arguably) out of date so far as relevant to the LPA’s RFR and longstanding urban design concerns. Should Peel seek to change or amend the NMP in the future, such changes will not be accepted<sup>31</sup>, should they seek to change fundamental design requirements.

104. It is in this context that the development proposal can and should be considered.

**The Impact of the Proposal**

105. The LPA raise (essentially) two issues: (a) the physical land take from the proposed CSq and (b) the acceptability of the northern elevation and its relationship to the CSq.

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<sup>31</sup> The LPA has (of course) not prejudged any such application

**(a) Physical Land Take**

106. The extent of the physical land take is agreed. The current proposal will result in the loss of 11% of the Cultural Sq compared to the current iteration of the OPP, as a result of a significant amount of car parking and access being placed on top of it (see TE figure at p.8).
  
107. A further area of the CSq is taken by the significant landscaped bund which has been provided to screen the northern elevation from the remainder of the CSq. Whilst the precise details of this bund have not been presented, it further reduces the space and options for the CSq as a flexible world class destination point.
  
108. The percentage may be lower when compared to previous iterations of the OPP. However, given such iterations have been superseded and cannot now be delivered, such a comparison is meaningless, especially given the Policy CC 12 requirement to assess this proposal against the current OPP.
  
109. However, the LPA has always been clear that a reduction in the size of the CSq *may* be acceptable IF the interface with the CSq from plot CO2 was designed in a manner which fulfilled the vision for this important destination space (see TE at 6.3). Unfortunately, it does not. Accordingly, the submitted UU does not overcome the LPA's RFR because it would only provide additional open space, divorced from the CSq and would not address the design concerns. Further, it would not secure the POS in perpetuity because it could be changed by a future planning application/permission, which would inevitably involve a wider balance of issues than simply POS provision.

**(b) Relationship between CO2 and Cultural Square**

110. The LPA has consistently expressed a concern over the poor interface between CO2 and the Cultural Square.<sup>32</sup> It is considered to constitute poor design, in conflict with the vision of the OPP and CD NMP in several critical respects.
111. A significant area of the CSq is taken over by the landscaped bund. The precise details of the bund have not been presented. The most detail is provided by the Landscape Statement (CD 1.36),<sup>33</sup> which is the Appellant's attempt to present the best option to the LPA (XX of DM).<sup>34</sup> The Landscape Statement presents the proposal as an *improvement* to the CD NMP (see CD 1.36 at 6.3 and XX of DM). On analysis, it is anything but.
112. The CSq is 80m (E/W) and 35m (N/S) (EiC of DM). The north/south dimension is reduced by the double row of car-parking and the access road. The cross section (CD 1.36 at p.38) shows the bund indicatively at ~1.8m high, covering around half of the 35m. The residual flexible events space is reduced to around 17.5m (XX of DM). This dimension of the bund could be reduced but then its profile would become even more pronounced and engineered, which would not be acceptable.
113. The purpose of the bund is to *offer visual protection of the car park providing greater visual amenity to those using the public space in the future* (CD 1.36 at p.38). DM conceded that visual protection is only needed from something which is harmful. This is clear from the claimed improvement to visual amenity. The central design rationale of this significant engineered bund on the CSq is, therefore, to provide visual

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<sup>32</sup> See the comments of the Urban Design Officer in the Committee Report (CD 3A.1) and 2.26

<sup>33</sup> NB – it needs to be noted that 11 car parking spaces have been removed since the Landscape Strategy

<sup>34</sup> He confirmed it was putting “the best foot forward”

screening of the unsightly surface car parking. This is, on any fair reading of the OPP and CD NMP, the antithesis of the vision for CO2 and the Cultural Sq. The landscape bund is blocking views (quite intentionally) of the ground floor of the building. The bund *could* be lower but then the unsightly large surface car park would become more visible, which is not the design intention.

114. Further, the proposal fails to provide an animated primary frontage (see application plans especially CD 1A.1, 14, 38 and 44). To the south of the bund lies a path and SUDS attenuation planting beds. It is unlikely the SUDS would allow access them. There is (then) a significant area of surface car-parking. There is no access way through it; there is an impenetrable wall of cars. The proposition that this is an open, welcoming active frontage is risible. It is the antithesis of good design and the express requirements of the design code. Whilst the car parking has been reduced, there is still 2 rows of parking and a significant accessway between the proposal and the CSq.
  
115. The northern Block C elevation is essentially blank. There are secondary windows to a sub-station and residential unit. There are blank aluminium panels to a height of at least 3.7m fronting the car parking and the CSq beyond (CD 1A.44). Block A contains a commercial unit. It has its own terrace for outdoor eating, surrounded by boundary planting and the car-park. It will not provide any animation or relationship with the CSq. The primary entrance is in fact to the east (CD 1A.14). To get to the northern elevation, you must pass a sliding wind mitigation gate. There is no reason to expect anyone to walk past the main entrance and use the secondary entrance on the northern elevation. Again, there is no meaningful activity from the commercial unit on the northern elevation (CD 1A.38).

116. It follows that any activity or animation at the ground floor provided by the secondary entrance of the commercial unit becomes divorced from the “destination” CSq by car-parking, SUDS attenuation beds and a path, before the landscaped bund obscures any residual activity or relationship. Indeed, the suggested terracing on the bund would specifically orientate visitors away from the building.
117. This is a key issue of subjective professional judgment between the LPA and the Appellant. MAS asserts that the building interfaces well with CSq (MAS at 7.1.5). After examination, such a proposition is unsupportable.
118. Such a design is, as MAS candidly accepted, “not in line with the Masterplan”. It is, after examination, clearly the antithesis of it. The result cannot be considered to be either high quality design nor consistent with the world class vision for the area. There is a clear conflict with the development plan policies (CC10, CC12 and UD 1-5) and the OPP and approved CD NMP, as well as good practice design guides.

### **Car Parking Standards and Design Options**

119. To justify or explain the poor design solution, the Appellant has raised the requirement for car parking. However, the evidence of neither MAS nor DM nor IF makes any reference to the policy requirement for car-parking. IF candidly conceded that the key reason for the proposed development not complying with the LW parameters plans and the CD NMP is viability (IF at 5.4.34 and XX of IF). He conceded that:
- The car-parking standards are a function of the number of units proposed;
  - The number of units has been fixed by the requirement for gross sales i.e. if you reduce the number of units, you reduce the revenue and the profit of £7.4m would fall (see TC evidence);

- It is viability that is therefore driving the breach of the design code.
120. Whilst there may have been consideration of different options for design and layout, such options were considered by the LPA Officers on a without prejudice basis. IF concedes that there is no doctrine of estoppel by representation. Nothing a Planning Officer states in the processing of an application is binding on the authority (see *ex p Reprotech* [2000] UKHL 8). The LPA Officers discharged their duty to engage positively and proactively with this proposal, without prejudice to their longstanding concerns regarding the northern elevation and the CSq. It may be that what is proposed is the least worst outcome, when car-parking is considered on an isolated plot basis. However, IF conceded that there was no policy which required car-parking to be considered on a plot by plot basis, when MAS had conceded that the CD NMP took a holistic area based approach. There has been no evidence or analysis on the provision of car-parking across the Central Docks areas (whether in MSCP's or in surface level car parks) consistent with the CD NMP.
121. The real issue (then) becomes whether viability considerations justify the breach of the design code and the poor quality design.

### **VIABILITY**

122. The Landscape Statement is emphatically clear about the design rationale of this proposal: *There is a viability imperative to provide 140 [129 now] car parking spaces* to serve this development. This is consistent with the evidence of MAS, IF and TC. TC confirmed that a minimum number of units is required for the proposal to be viable. The mix cannot be changed. Accordingly, the number of car parking spaces is fixed by the number of units, which cannot be reduced. The issue is not car parking standards, which apply to the number of units. The issue is viability.

123. In XX, DM conceded (quite properly) that such an approach: (i) is not design led; (ii) is not landscape led; (iii) is not led by policy, guidance or the CD NMP. Rather, the viability of the proposal is being used to excuse a poor design which is the antithesis of the Local Plan policies and the CD NMP principles. In XX, IF conceded that:

- (i) There is no policy criteria to assess good design against viability concerns;
- (ii) There is no policy in respect of LW which requires stand alone applications to be considered in isolation. Rather, there is a clear policy requirement for *comprehensive* development (*supra*);
- (iii) When assessing high quality design, viability is not relevant;
- (iv) There is no basis for a lower standard of design to apply to stand alone applications;
- (v) **The LPA's case to consider viability across the Central Docks area or the wider LW area is consistent with Policy CC12 and the requirement for comprehensive development;**
- (vi) **Whilst there is no policy requirement for this proposal to deliver the development platform, there is a policy requirement for this proposal to deliver a world class vision and the mix in policy CC 24.**

124. The Appellant's viability evidence is entirely based in the application red line (as TC confirmed). This proposal will provide the infill for Plot CO2, that part of the CSq which is to be overlain by car-parking and the remainder of the CSq. The effect of this proposal is to "cross-subsidise" the delivery of parcel 3c and the CSq. It follows (as TC confirmed) that this proposal does not benefit from *any* cross-subsidy from any other part of the 1.7m sqm of revenue generating floorspace or the stadium proposal etc. The explanation is purely contractual (EiC and XX of TC). The Appellant has negotiated such an arrangement with the landowner. It is

not, therefore, Peel (as Master Developer) who will bear the cost of providing the development platforms but the Appellant because Peel wish to “de-risk” (EiC of TC). The LPA do not question the commercial wisdom of de-risking but they do not consider that such commercial considerations come close to justifying this proposal and the impact on CSq. In XX, TC conceded that he had provided no evidence on:

- The viability of the OPP across the LW area;
- The viability of the CD NMP across the Central Docks area;
- The landowner’s ability to fund the development platform for CO2 to deliver a policy compliant scheme or the CSq;
- IF does not therefore assert that there is no scheme which Peel could deliver, with a lower number of units and lower amount of car-parking (XX of IF).
- This would require some cross-subsidy or equalisation across the Central Docks or LW area. However, this was always going to be the case. TC agreed that the CSq was never going to be revenue generating and would require funding from another part of the wider development.

125. The origin of the commercial imperative is clear. It stems from the cost of infilling the WWD (£10.003m). There is an immediate tension in the conception of this proposal: it is the cost of infilling the WWD (which the LPA considers to be significantly harmful) which is driving the poor design response (which the LPA considers also to be significantly harmful).

126. It is not possible, therefore, to conclude that such a poor design demonstrates the required public benefits (HD 1 and NPPF 202 and 203) and/or that the poor design is acceptable simply on the grounds of commercial viability. If consent is refused, the LPA consider that it will fall to Peel to redevelop the site consistent with the CD NMP. If that is not

the case, the OPP may have to be re-considered. However, on the basis of the evidence before this Inquiry, it cannot be concluded that the Central Docks area will not be developed further.

#### **MAIN ISSUE 4**

127. The appeal proposal includes the provision of 194 no. 1 bedroomed apartments, a proportion of 59%. Local Plan Policy CC24 supports the City Centre Strategic Investment Framework's ambition to "*grow the City Centre population and to ensure distinctive neighbourhoods*" with a focus on "*creating a more diverse residential population including provision for families as well as for young and older people*". Policy CC24(1)(b) is specific and clear: a residential development must include a "*greater proportion of 2 bed+ dwellings than 1 bed dwellings*". In light of IF's XX, it is agreed that there is conflict with CC24(b). This is an up to date policy in the Plan.
128. The explanatory text in support of CC24 explains the policy aim and operation: "*The aim in the City Centre is to broaden the housing mix and encourage a greater proportion of larger dwellings (2 bed +). Therefore, permission will only be granted for residential proposals where a greater proportion of 2 bed + dwellings than 1 bed dwellings is provided. A proposal which seeks to provide a greater proportion of 1 bed properties will not normally be granted planning permission*" (p.103 at [6.127]). It is clear from the explanatory text that exceptions are meant to be very limited and geographically specific: "*Exceptions may apply at Concert Square and Mathew Street where night-time economy uses are focused, and thus are areas within which family accommodation is less appropriate*" (p.103 at [6.127]).
129. In view of the recently adopted Local Plan containing policy attracting full weight, it is not necessary to go behind policy CC24(1)(b). It is sufficient

to note that there is policy conflict, conflict with the development plan and that the development plan carries full weight. The scheme is not policy compliant.

130. The management of the housing market across the wider HMA is a key strategic planning issue the Local Plan seeks to address, as the final Inspector’s report explains (LP Inspector Final Report, ID4, p.8 at [19]):

*19. At the time of plan submission in 2018, there was no evidence of any unmet housing needs within the wider housing market area that the Plan should assist in meeting. Strictly, there is no unmet housing need arising from within the City given the extent of the already built and consented supply, particularly in and around the city centre. The profile of this supply is, however, heavily skewed to smaller apartments and flats rather than the need for family sized properties as identified in the Strategic Housing Market Assessment (SHMA) and the SHELMA2. Whilst some of the proposed allocations in the submitted Plan would modestly assist in diversifying the mix of future housing supply, there remains an ongoing strategic planning matter about how the housing market is appropriately balanced across the wider HMA to ensure the variety of house type needs are sustainably met.*

131. Further, as there is a 5YHLS and more than sufficient sources of housing supply to meet the housing requirement across the Plan period the scheme is not necessary to meet housing need (see Policy H1 and XX of IF). The smaller units proposed by the scheme are likely to be unsuitable for larger families, including those with children or extended family members. There are no material considerations outweighing this policy conflict.

132. The SHMA 2017 observed: “*The relatively low percentage of larger detached and semi-detached homes is reflected in the low percentage of*

*properties with 4 or more bedrooms, which account for 13.3% of homes across Liverpool. In total 73.8% of the City's housing stock comprises 2- or 3-bedroom dwellings. 12.9% comprises studios or 1 bed properties (which is above the 9.7% across the Northwest)" (CD 4.34 SHMA 2017 p.69 at [3.55]). The SHMA 2017 concluded that the number of 1 bedroomed properties which should be permitted during the plan period must be no more than 5% in respect of market housing across the city. Limited provision of family homes was identified as a key feature of the Northern HMA City Region Housing Strategy<sup>35</sup>. "The strategic conclusions recognise the role which delivery of larger family homes can play in releasing supply of smaller properties for other households; together with the limited flexibility which one-bed properties offer to changing household circumstances which feed through into higher turnover and management issues" (CD 4.34 SHMA 2017 p.156 at [8.27]; CD 4.49 SHMA Housing Mix References at [1.30]).*

133. There is no conflict between policy H3 and CC24, the two policies must be read together. Policy H3(1) is clear that an appropriate housing mix as identified in the SHMA should be provided. If H3 and CC24 are in conflict (such that there is compliance with H3 and conflict with CC24) greater weight must attach to CC24 as the area specific policy (as IF accepted).
134. The explanatory text of a different policy (H3), which is not itself policy nor to be construed as such, in no way diminishes the clear requirements of CC24. Para. 8.16 – 8.17 of the text refers to the housing mix requirements in the SHMA. Para. 8.18 refers to the need to have regard to high level information which may become available during the lifetime of the plan (need, existing mix, affordability, and turnover). Para. 8.18 also

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<sup>35</sup> See CD 4.49 SHMA Housing Mix References at [1.33]. See also SHMA CD 4.34 at p.28 [2.31], p.153 at [8.16-17], p.161 at [8.52], p.200 [10.31].

refers to dealing with individual sites and having regard to the nature of the site and character of the area. The Site is a city centre site and so the nature and character of the Site is expressly covered by a specific policy: CC24.

135. The appeal scheme conflicts with adopted development plan policy on housing mix. As more than half of required housing numbers have already been provided, the ability of the LPA to influence property sizes in order to balance out housing provision, is limited. In order to achieve the development management objectives enshrined in the Local Plan significant weight must be attached to conflict with policy CC24.
136. Granting consent in the teeth of such a recent development plan policy would set a very adverse precedent and would undermine faith in the planned system, contrary to the NPPF. Where a proposal conflicts with an up-to-date development plan, permission should not usually be granted (NPPF 12).

#### **PLANNING BALANCE**

137. The fact that the OPP was granted means that in the planning balance for that case the benefits outweighed the harm. It was a different balance, taking place in the context of a WHS designation and concerning a regeneration scheme constituting the largest outline permission in England and Wales. It is acknowledged that the planning history demonstrates that schemes have been proposed which did deliver sufficient benefits to outweigh the identified harm, schemes which would deliver world-class high-quality design. However, the LPA consider that this Scheme does not offer sufficient public benefits to justify the harm to the historic environment.

138. It is accepted (as it has always been accepted) that the Scheme does deliver some benefits (see the Committee Report). In view of the 5YHLS (agreed at 6.4 yrs) and the identification of sufficient housing across the Plan period (an agreed surplus of 5935 units), the weight to be given to the provision of housing is limited. Whilst there are economic benefits, it is clear that these benefits would flow from any comparable regeneration scheme. The weight to be given to the ‘unlocking’ of the Site is limited in view of the absence of any specific scheme which relies on this scheme to come forward.
139. Further, the adoption of policy CC24 is a material change in circumstances from the grant of the LW OPP.
140. The LPA do not consider that such policy conflict is excused/outweighed by viability concerns, particularly when the intention is to develop the entire LW area over a period of 40 years to a world class standard. There are harms and policy conflict in relation to heritage, urban design, and housing mix. NPPF (134) endorses the position that development that is not well designed should be refused. The Scheme is not the world class development required by policy at this key Site. On the contrary, the Scheme is directly contrary to the agreed and endorsed Masterplan.
141. In weighing the planning balance, it is also necessary to consider any adverse impacts to the existing local community. However, the LPA does not consider that there is any (additional) adverse impact (noise, air quality etc) which cannot be addressed by necessary planning conditions amended in line with discussion at the inquiry to include further controls in terms of working hours and provision of information to residents by way of a dedicated residents forum.

### **CONCLUSION**

142. Ask a Mancunian what is the UK's second city and they will tell you 'Manchester', ask a Brummie and you will hear 'Birmingham'. Ask a Scouser and they will tell you 'London'. The LPA acknowledges that a high-quality design that does not prejudice the implementation of the wider scheme would be acceptable on this site. However, this scheme is not the world-class development the City of Liverpool aspires to build.
143. The Appeal is contrary to the development plan. There are no material considerations which outweigh such conflict. It is, therefore, the LPA's case that planning permission should be refused.

**GILES CANNOCK QC**  
**CONSTANZE BELL**

**Kings Chambers**  
**1<sup>st</sup> June 2022**