

PINS REFS – APP/L5810/V/03/1128907 and APP/L5810/V/03/1128908
LPA REFS – 03/1141/FUL and 03/1142/CAC

**In relation to a Public Inquiry relating to land at:
TWICKENHAM POOL, TWICKENHAM RIVERSIDE**

**CLOSING ON BEHALF OF THE LONDON
BOROUGH OF RICHMOND UPON THAMES**

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Abbreviations

AUDP	The London Borough of Richmond Upon Thames Unitary Development Plan adopted October 1996 (Inquiry Document 1)
FRUDP	The Unitary Development Plan: First Review (CD15)
The Council	The London Borough of Richmond Upon Thames, the Applicant.
EH	English Heritage
FSS	The First Secretary of State
TRTG	The Twickenham Riverside Terrace Group aka The Twickenham Riverside Terrace Project Group. A rule 6 objector.
TSG	The Twickenham Society Group - consisting of the Twickenham Society, the Eel Pie Island Association, the Environmental Trust for Richmond upon Thames, the Friends of Twickenham Green, the Marble Hill Society, the Strawberry Hill Residents Association, the Thames Eyot Residents Association and the York House Society. Rule 6 supporters.
The Twickenham Pool Site	The Council owned land comprises approximately 0.6 hectare in total.
SSCMS	Secretary of State for Culture Media and Sport
The Application Site	An area of 0.128 hectare forming part of the Twickenham Pool Site.
The Pool Building	The building proposed to be demolished under the Call-in proposals and described as “plant & changing rooms entrance space”: see CD2.
The P(LB&CA)A 1990	The Planning (Listed Buildings & Conservation Areas) Act 1990
The TCPA 1990	The Town and Country Planning Act 1990
The Call-in proposals	The Council’s application for planning permission (LPA reference 03/1141/FUL ¹) and conservation area consent (LPA reference 03/1142/CAC ²): see CD2.
XX	Cross-examination
EC	Evidence in chief
IQ	Inspector’s questions.

¹ Planning permission is sought for: “Demolition of “Pool Building” (plant & changing rooms entrance space) hard & soft landscaping of resultant footprint. Partial clearance of pool side lido to form park & children’s play area secured by fencing. Steps from lower to upper areas. Short term scheme pending future redevelopment envisaged 5 year duration”

² Conservation area consent is sought for demolition of “Pool changing & plant rooms”. The demolition is “total with exception of retaining wall at rear ground floor”.

NB – this document encompasses oral additions (and typographical corrections) made in the closing statement to the inspector 27/02/04

Introduction

1. In summary it is the Council's case that planning permission and conservation area consent (LPA references 03/1141/FUL and 03/1142/CAC) for the Call-in proposals should be granted.
2. The Council has provided to the inquiry detailed evidence to support its case and has addressed each of the issues upon which the Secretary of State indicated that he was particularly concerned to be informed on.
3. Further, it is submitted that *none* of the evidence presented to this inquiry either orally or in writing, by those opposed to the Call-in proposals, comes anywhere near establishing justified grounds for refusal of either consent.
4. These submissions should be read together with the opening submissions delivered on the first day of the inquiry.

The scope of this inquiry

5. The scope of this inquiry was to a large extent dictated by the FSS's letter dated 29 September 2003 which indicated the three issues he was particularly concerned to be informed on (CD5).
6. These submissions will focus primarily on these three issues as did the evidence of the Council presented to the inquiry. However, there are a number of other issues and sub-issues raised by the r. 6 parties that need to be considered as well.
7. In addition the Inspector asked to be informed on the following issue: whether in the light of the House of Lord's judgment in *Shimizu (UK) Limited v Westminster City Council* [1997] 1 WLR 168 and the advice given in Appendix E of Circular 14/97 the Call-in proposals involve "demolition" in the now accepted meaning of that word or are limited to "alterations" such that conservation area consent is not required.

The legal context

8. The overall approach to the issues which arise in this case are considered below. However, in this section the Council sets out its legal submissions.

General

9. S. 72(1) of the P(LB&CA)A 1990 provides that “[i]n the exercise, with respect to any buildings or other land in a conservation area, of any [functions under or by virtue of] any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.” In *South Lakeland District Council v. Secretary of State for the Environment* [1992] 1 All E.R. 573, the House of Lords held that preserving the character or appearance of a conservation area could be achieved not only by a positive contribution to preservation, but also by development which left the character or appearance of the area *unharm*ed – that is a development which had a neutral impact on the character and appearance of the conservation area. It was therefore sufficient for the decision maker to ask himself whether the development would harm the area: if it would not adversely affect the character or appearance of the area and was otherwise unobjectionable on planning grounds, there could be no planning reason for refusing to allow it to proceed³. The effect of the House of Lords decision in *South Lakeland* is summarised in PPG15 at para. 4.20. Applying the relevant test it is the Council’s case that the Call-in proposals enhance or at the very least (and it really is the very least) preserve the character and appearance of the conservation area.
10. S. 54A of the TCPA 1990 provides “Where, in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.” In *City of Edinburgh v. Secretary of State for Scotland* [1997] 1 W.L.R. 1447 Lord Hope (with whom the remainder of their Lordships agreed), held that s.54A (in Scotland, s.18A of the Town and Country Planning (Scotland) Act 1972) “... lays down ... a statutory requirement. It has the force of law behind it ... it is, in essence, a presumption of fact, and it is with regard to the facts that the judgment has to be exercised” his Lordship went on “there is now a presumption that the development plan is to govern the decision on an application for planning permission ... if the application accords with the development plan and there are no material considerations indicating that it should be refused, permission should be granted.” It is the Council’s case that the Call-in proposals accord

³ Lord Bridge (with whom the other Lords concurred) was of the opinion that if the objective of the section were to inhibit any development which was not either a reinstatement or restoration on the one hand, nor a development which positively enhanced the character or appearance of the area on the other hand, it would have been expressed in different language from that used.

with the AUDP and that there are no material considerations indicating that planning permission should be refused.

The need for conservation area consent

11. Turning to deal with the specific issue upon which the Inspector has asked to be informed namely whether in the light of the House of Lord's judgment in *Shimizu* and the advice given in Appendix E of Circular 14/97 the Call-in proposals involve "demolition" in the now accepted meaning of that word or are limited to "alterations" such that conservation area consent is not required.
12. S. 74(1) of the P(LB&CA)A 1990 provides "A building in a conservation area shall not be demolished without the consent of the appropriate authority ... ⁴".
13. Of crucial importance in this regard is the advice inserted into para. 4.27 of PPG15 by Appendix E of Circular 14/97 which provides so far as is material:

"The House of Lords judgment in the recent case of *Shimizu (United Kingdom) Ltd v. Westminster City Council* [1997] 1 All E.R. 481 affected the long-accepted practice of interpreting the term "listed building" throughout the Planning (Listed Buildings and Conservation Areas) Act 1990 as including "part of a listed building". This means that whether work amounts to demolition or alteration of a listed building must be considered in the context of the whole of the listed building and that "demolition" refers to pulling down a building so that it is destroyed completely or [at] least to a very significant extent. It follows that a scheme of works which involves the demolition of part only of a listed building, falling short of the destruction of the whole listed building, will be works for alteration of the listed building and will not constitute demolition for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 unless they amount to a clearing of the site of the listed building for redevelopment.

Whether works are for demolition or alteration is still a matter of fact and degree in each case, to be decided in the light of guidance given by the House of Lords. Major works which comprise or include acts of demolition falling short of the complete destruction of a listed building, e.g. façade retention schemes, may still constitute works for demolition, therefore, depending on their extent. However, many works which were previously regarded as demolition, because they involved the destruction of part of the fabric of the building, will now fall into the category of alterations and will require consent only if they affect the building's character as a building of special architectural or historic interest. The demolition of a curtilage building is likely to fall within this category.

The House of Lords also considered that works for the demolition of an unlisted building in a conservation area must also involve the total or substantial destruction of the building concerned. This means that many works which involve the destruction of the fabric of part only of a building will not be works of demolition and will not require conservation area consent" (emphases added).

⁴ By virtue of s. 74(2) the appropriate authority for the purposes of this section is in relation to applications for consent made by local planning authorities, the FSS.

14. Before considering the position in relation to the Call-in proposals it is necessary to consider the position the Council took in relation to TRTG's terrace scheme proposals granted planning permission in 2001 (LPA reference 01/0540/FUL). The Council, at officer level, "took the view that conservation area consent was not required for the proposals under the *Shimizu* principle, on the basis that the proposals involved only the partial demolition of the building" (see Mr Freer's proof at para. 2.8). However, it is plain that the TRTG proposals would at the very least substantially alter the Pool Building. The whole of the first floor would be removed and the remaining ground floor part of the building would be re-clad and have several arches built into it. It is also plain that if (which is not accepted) the Pool Building has any features of historic and architectural interest) these would on the whole be lost if the TRTG scheme were implemented. Did the Council get it right in determining that no conservation area consent was required for the TRTG proposals? It is submitted that the Council did get it right for the following reasons:

- a. first, plainly the TRTG scheme involves less than the pulling down of the Pool Building so that it is "destroyed completely" (see *Shimizu* and PPG15 as amended);
- b. secondly, as PPG15 makes clear "many works which were previously regarded as demolition, because they involved the destruction of part of the fabric of the building, will now fall into the category of alterations and will require consent only if they affect the building's character as a building of special architectural or historic interest". It was and remains the Council's view that the Pool Building does not have any features of architectural or historic interest and does not make a positive contribution to the conservation area;
- c. thirdly, as *Shimizu* and PPG15 as amended make clear "[w]hether works are for demolition or alteration is still a matter of fact and degree in each case". The Council's determination that conservation area consent for the TRTG proposals was not required was made in 2001 and has never been the subject of legal challenge. (It is also of note that no issue about the need for conservation area consent was raised by anyone at the time the TRTG proposals were considered. EH were silent on the matter as was the Secretary of State when he determined not to call-in the planning application: see McKeivitt Appendix 1).

15. Accordingly, it is submitted that for these purposes one must proceed on the basis that the TRTG proposals granted planning permission in 2001 would not require conservation area consent to be implemented.

16. What then of the Call-in proposals? The Council's proposal although it leaves the retaining wall at ground floor level in situ undoubtedly involves the "total" (or almost total) demolition of the Pool Building (see the description of the proposal in the conservation area consent application). It is accordingly submitted that conservation area consent is required for demolition of the Pool Building and should be granted for the reasons set out below.

17. However, might it make a difference that the Pool Building is one of a number of or complex of buildings on the Twickenham Pool Site? It is submitted that the answer is "no". In this context reference is made to the case of *Gardline Shipping Limited v Secretary of State for the Environment for Transport and the Regions* (unreported 10 March 1999, CO/1863/98 per Nigel MacLeod QC). This was an appeal under s. 63 of the P(LB&CA)A 1990 against a decision of an Inspector. The Inspector had dismissed an appeal by the applicant against the local planning authority's refusal of conservation area consent for demolition in a conservation area in Lowestoft. One of the grounds of challenge was that the Inspector in reaching his decision to dismiss the appeal misunderstood and/or misapplied the law as set out in the decision of the House of Lords in *Shmizu* and in particular that the proposal in respect of which conservation consent was being sought was only for partial demolition of a building and therefore conservation area consent was not required.

18. The learned Deputy Judge held:

"... it is, in my judgment, beyond dispute that, in the circumstances of the present case, it is a matter of fact and degree for the Inspector's judgment as to what constitutes a building. The Inspector dealt with the first of these points at paragraphs 3 and 4 of his decision letter where he said this:

"The application the subject of this appeal was submitted in 1995 and has since been in abeyance pending negotiations with the Council. In the interim the House of Lords judgement in *Shimizu (UK) Limited v. Westminster City Council* has affected the interpretation of the law with regard to the demolition of buildings within Conservation Areas. You argued that the judgement cast doubt as to whether consent was still required in this case.

I have considered your observations on this issue and the submission made at the inquiry by Waveney District Council. The relevant considerations seem to me to be:

(a) although the application refers to a building attached to a complex of other buildings, structurally it comprises a distinct building in itself: (b) your application clearly indicated that it was your intention to entirely demolish the whole of the building, which occupies the entire area outlined in red on the application plan and (c) you confirmed that you did not intend to alter or replace the building in any form or in any part, but retain its site as open land for vehicular access and car parking. I consider that the application cannot therefore be regarded as being one for any form of alteration. It is therefore an application for the total demolition of a building within the Conservation

Area. In these circumstances I am satisfied that conservation area consent is required for its demolition."

It is clear from this that the Inspector addressed the argument that this was partial demolition and not subject to conservation area control. He made a reasoned, professional judgment, including a finding of fact that the building in question was a complete building and rejected the argument. This disposes of the question on a factual basis that this was demolition of a whole building so Shimizu does not come into play. The court will not interfere with such judgments in the absence of perversity, or a gross error⁵, such as consideration of the wrong refusal of consent. I find no perversity and I reject the claim that the wrong refusal of consent was considered."

19. Similarly, in this case the Pool Building although part of "a complex of other buildings" in the Council's view "comprises a distinct building in itself" notwithstanding Mr Wren's (tentative) suggestion (when XX Dr Edis) that the pool and Pool Building may be part of a single building/ structure. The Call-in proposals involve the near total demolition of the Pool Building – a distinct building in itself - and hence require conservation area consent.

Other legal matters

20. Mr Perry in his evidence on behalf TRTG mentioned the concept of "public trust land". This point is dealt with in a letter by Mr Chesman (the Council's Assistant Head of Legal Services) to Mr Perry dated 22 January 2002 (Inquiry Document 11). The expression "public trust land" no longer has any relevance due to various repeals of provisions of the Local Government Act 1972 and furthermore the Council's view is that the Twickenham Pool Site "was never public trust land in any event".

The overall policy context – the test to be applied

21. The starting point is para. 40 of PPG1 referred to a number of times in XX of the r. 6 parties:

"The Government is committed to a plan-led system of development control. This is given statutory force by section 54A of the 1990 Act. Where an adopted or approved development plan contains relevant policies, section 54A requires that an application for planning permission or an appeal shall be determined in accordance with the plan, unless material considerations indicate otherwise. Conversely, applications which are not in accordance with relevant policies in the plan should not be allowed unless material considerations justify granting a planning permission. Those deciding such planning applications or appeals should always take into account whether the proposed development would cause demonstrable harm to interests of acknowledged importance"(emphasis added).

⁵ These high thresholds for the Court's intervention emphasise why we must proceed on the basis that the Council's conclusion that the TRTG proposals did not as a matter of fact and degree involve demolition was correct.

22. This is crucial. Planning permission should only be refused *if the proposed development would cause demonstrable harm to interests of acknowledged importance.* The Planning Encyclopaedia points out that this expression comes originally from Ministerial Circular 61/53, which stated: "Where there is no clear and specific reason for refusing permission or attaching conditions, the applicant should be given the 'benefit of the doubt'. ... Development should always be encouraged unless it will cause demonstrable harm to an interest of acknowledged importance."
23. In this case there is, of course, the added element of conservation area controls given that the whole of the Application Site lies within a conservation area and demolition is proposed. The relevant test (preserve or enhance) is considered above under the heading of legal submissions - it is sufficient for the decision maker to ask himself whether the development would *harm* the area – that is to say a development which would have a neutral impact on the character and appearance of the conservation area is acceptable. Thus if proposed development does anything other than adversely affect the character or appearance of the area and is otherwise unobjectionable on planning grounds, there can be no planning reason for refusing to allow it to proceed.
24. Thus notwithstanding the added element of conservation area controls the basic test is the same: planning permission and conservation area consent should only be refused if the proposed development would cause harm.
25. Of course, whether to grant planning permission/ conservation area consent involves a balancing exercise. For these purposes it is necessary to balance the acknowledged benefits of a development against any demonstrable harm caused. Mr Freer in his proof of evidence undertakes this exercise in paras. 7.25 – 7.26 of his proof. His conclusions are important and deserve to be set out in full:
- “7.25 In concluding my evidence, it is my normal practice to balance the acknowledged benefits of a development against any demonstrable harm caused. However, in this case, I am unable to identify any demonstrable harm resulting from these proposals.
- 7.26 Instead, I have been able to identify a number of significant benefits that directly result from these proposals. Firstly, the proposals result in the loss of the building that is widely (albeit not universally) accepted as not making a positive contribution to the character and appearance of the conservation area or the riverside, and replace it with a carefully designed area of landscaped open space. This is in itself an environmental improvement and a material benefit. The proposals also bring into beneficial use a site that has been disused for many years, and in a way that increases the enjoyment of the riverside. This is a further, and in my view significant, benefit resulting from the proposals. Moreover, these benefits are achieved without

prejudice to the Council's longer-term proposals for the comprehensive redevelopment of the site as a whole."

26. Furthermore, in terms of the objections (on the part of TRTG and Mr Wren) and "reservations" (on the part of TSG) in relation to the Call-in proposals it became clear in XX that with the exception of Mr Wren's plea for retention of the building (considered below) none of these matters even on these parties own cases were contended to amount to demonstrable harm to interests of acknowledged importance such as to justify the refusal of planning permission/ conservation area consent. The detail and significance of this is considered further below.

27. The key policy advice in the context of the Call-in proposals is set out in para. 4.27 of PPG15:

"The general presumption should be in favour of retaining buildings which make a positive contribution to the character or appearance of a conservation area. The Secretary of State expects that proposals to demolish such buildings should be assessed against the same broad criteria as proposals to demolish listed buildings (paragraphs 3.16-3.19 above). In less clear-cut cases - for instance, where a building makes little or no such contribution - the local planning authority will need to have full information about what is proposed for the site after demolition. Consent for demolition should not be given unless there are acceptable and detailed plans for any redevelopment. It has been held that the decision-maker is entitled to consider the merits of any proposed development in determining whether consent should be given for the demolition of an unlisted building in a conservation area."

28. Thus in the context of PPG15 the essential first issue to be determined is whether the Pool Building makes a positive contribution to the conservation area and in the FSS words "whether the proposal would preserve or enhance the character or appearance". This is the second issue upon which the FSS has asked to be informed and it is in relation to that issue that consideration will be given to Mr Wren's plea for retention of the Pool Building.

29. However, it is necessary to say a little more on the application of the policy in para. 4.27 of PPG15 (for the Council's evidence on this see section 2 of Dr Edis' proof):

a. first, in cases where an unlisted building makes little contribution to the conservation area, or no contribution at all, PPG15 advises that consent for demolition should not be given "unless there are acceptable and detailed plans for any redevelopment". Thus if as the Council submit the Pool Building makes no positive contribution to the conservation area the focus of the policy test is on the "acceptability" of the Call-in proposals themselves. There are two further points:

- i. two of the witnesses appearing on behalf of TRTG (Messrs Stearman and Perry) suggested that in this situation PPG15 required there to be detailed and acceptable *long-term* plans for redevelopment of the Application Site. However, this is to read-in words to PPG15 that are not there. Under XX it became patently clear neither witness had in fact read PPG15. As a fallback Mr Stearman in XX tried to suggest that whether or not PPG15 said what he wanted it to say (i.e. that there had to be detailed and acceptable *long-term* plans for redevelopment) that is what the FSS in his call-in letter had interpreted PPG15 as saying. This is wishful thinking. The FSS's concern as set out in the second issue he has asked to be informed upon is not the absence of detailed and acceptable *long-term* proposals but "whether demolition should be permitted in the absence of acceptable and detailed proposals *for redevelopment of the site as a whole*". This is on the face of it an issue relating to the geographical (and not the temporal) extent of the Call-in proposals;
- ii. in so far as the FSS geographical extent issue is concerned the Council's case (set out more fully below) is that there is no requirement in PPG15 or elsewhere in planning policy or practice to include the whole of the Pool Site in the short-term temporary scheme. The Council's current proposals already bring forward a number of benefits without the remainder of the site being included;
- b. Secondly, and again importantly the presumption in favour of retaining unlisted buildings within conservation areas only applies where there is a "clear-cut" case for stating that they make a positive contribution (see the terms of para. 4.27);
- c. Thirdly, in cases where there is a clear-cut contribution, para. 4.27 requires proposals for demolition to be assessed against the "broad criteria" in paras. 3.16-3.19 of PPG15 relating to (i) the condition of the building, (ii) the adequacy of efforts to keep it in use, and (iii) the merits of alternative proposals for the site. It is important that these are called "broad criteria" by PPG15 rather than strict tests;
- d. Fourthly, in the present case it is submitted that there is no need to apply the "broad criteria" in paras. 3.16 – 3.19 because the Pool Building does not make a positive contribution to the character or appearance of the conservation area;
- e. Fifthly, however in any event the Council through Dr Edis' and Mr McKeivitt's evidence have, without prejudice to the Council's principal contentions, considered these "broad criteria" and reach the view that even if applicable (which they are not) they are satisfied in this case.

The broader context

30. In opening reference was made to a number of contextual points set out in the 10 December 2002 Cabinet at CD19 including that “[t]he subject and virtually any approach to considering a way forward is complicated by the fact that Twickenham Riverside has a long (and complex) history and possibly, a reputation for generating public controversy. There may be a risk that the aspirations for the site mean it has become “all things to all people”. What is clear is that for a significant number of stakeholders, the site is held in very deep affection and that any further attempts to redevelop it will continue to attract significant levels of public interest and scrutiny” (para. 4.6.2) and that “[m]any members of the public appear to have robust views about *what* ought to be built at the Riverside and *why or how* it ought to be built. However, despite the efforts of many over periods of years, these have not converged in a unified and detailed vision for a scheme which would satisfy the differing shades of opinion as well as numerous regulatory constraints which apply to the Council’s conduct of such transactions ...” (para. 4.6.12).
31. These matters are considered further in Mr McKeivitt’s proof where he makes, inter alia, the following points:
- a. the Twickenham Pool Site “is subject to a plethora of public expectations some of which are in competition with each other” (para. 2.1.11);
 - b. “there are mutually exclusive public visions for the redevelopment of the site as a whole – and evidence of major shifts in thinking over time (in certain quarters)” (para. 2.1.15);
 - c. “[s]ince its closure in 1980, there have been a multitude of suggestions for alternative uses of the former Twickenham Pool Site” (para. 3.1);
 - d. “Public expectations remain high and it may be that the original Alsop/Zogolovitch/First Premise scheme (which was based on a presumption of Lottery funding⁶ to reduce the overall level of enabling development) has unduly influenced public expectations that the former pool site can be successfully redeveloped with a very limited amount of enabling development” (para. 3.53).
32. Why is the Council pursuing short-term scheme? Mr McKeivitt explained this in his EC:
- a. the Twickenham Pool Site has a long and troubled development history;
 - b. the Council has concluded that previous attempts to redevelop the site were unrealistic and that a future long-term scheme will need to carefully balance the

⁶ Which was not forthcoming.

requirement for commercial enabling development and public benefit. However, it will be quite some time before it is possible to achieve a long-term solution due firstly to the essential research and policy development required for a successful long-term solution. The UDP Inspector in para. 11.17 rejected the suggestion that even a modest long-term scheme could be implemented quickly. The Council agrees. This emphasises the need for a short-term scheme, which the Call-in proposals provide. The Council has only just received the FRUDP inspectors report and this will need to be considered by the Council as part of the subsequent UDP adoption process (see Inquiry Document 17). The Council will then produce a planning site brief. In parallel, the Council will be undertaking detailed work to explore financial viability and the development scenarios for a long-term scheme. The Twickenham Challenge process has also to be completed. All of these things take time. Once these are sufficiently well-developed, the Council will need to give consideration to a development brief and seek feedback from potential long-term developers on its thinking;

- c. accordingly the timescale for implementation of a long-term scheme will not be brief – and is likely to take approximately five years. The Council does not intend to approach the long-term redevelopment of the site in any other way. It is a prudent and step-by-step process;
- d. therefore, in the interim, the Call-in proposals are designed to remove blight, create a safer and more secure environment, return land at the Twickenham Pool Site back to beneficial public use and provide the public benefits of children’s play facilities and a hard and soft landscaped public open space.

33. Why is the Council scheme developing only part of the site? Mr McKevitt explained this in his EC:

- a. the scheme is targeted to tackle the two most negative aspects of the land within the Council’s ownership and control – namely the Embankment elevation and Wharf Lane. The Pool Building is exceptionally vandalised and the proposals will remove a destination site which has also been used for drug-taking and illicit under age drinking;
- b. Wharf Lane in particular has a very negative aspect and the introduction of the playground use will create interest and activity in an area that is particularly inhospitable. Local people have described it as “oppressive”. The improvement to the character of the area will bring people back to this part of Twickenham;
- c. the Council considered a number of potential “prior options” for the temporary use of the site prior to the report to Cabinet in December 2002 (Mr Fearon Brown

also gave evidence on this). These included demolition, site clearance and landscaping. These were expensive and more likely to be difficult to remove in advance of a long-term scheme. Essentially, the Call-in proposals are a balance between urgent improvements to the most prominent parts of the conservation area in the Application Site and limiting the potential of the scheme to prejudice a long-term scheme.

34. What will the Council do if this application does not receive planning permission? Mr McKevitt explained this in his EC. The Council is likely to continue with the procurement of a long-term scheme and the Twickenham Challenge. However, the probability of an alternative interim scheme is close to zero, given the cost and timing implications. The site would remain derelict. Thus the refusal of the consents sought would condemn the Twickenham Pool Site to 5 more years blight.
35. In opening I said that the reality now is that whatever is proposed by the Council for the Twickenham Riverside would attract trenchant objection from some quarters – this inquiry has illustrated that. It must be accepted that this is a site where it is not possible to please all of the people all of the time⁷. As Mr McKevitt explained in his EC a major benefit of granting planning permission is that it would break the impasse which has resulted in the Twickenham Pool Site remaining out of any beneficial use for more than 20 years. Mr McKevitt thought that this would improve greatly the prospects of long term redevelopment of the whole of the Twickenham Pool Site because it would give developers confidence that *something* could be done on this site.
36. It is of note that the Call-in proposals have attracted remarkably little objection: in total there were 14 objections from local residents to the Call-in proposals when the Council considered the application in July 2003. All of the relevant local amenity groups (see below) were then and indeed remain “broadly supportive” of the proposals: see the report to the Planning Committee on 31 July 2003, CD3. It is also noteworthy that the Twickenham Town Centre Management Board (composed of local residents, businesses and Councillors) wrote to PINS supporting the scheme and believe that it would be of great benefit to the local community.

⁷ One local resident put it this way “There have been so many attempts to do something at Twickenham pool which have failed that if it is not even possible to get rid of the wrecked pool building and replace it with open space and a playground, maybe it’s not possible for the local authority to do anything with it all?” (see Appendix N to TRTG’s evidence, letter from Alison Pointer)

37. It was also noted in opening that the 31 July 2003 report makes another important point about the Call-in proposals (p. 29):

“It may not be considered by some to be the most desirable solution but the test from the planning application perspective is whether it is preserving or enhancing the character and appearance of the conservation area and thus the Thames Landscape Strategy and the Thames Policy Area. There may be other ways of achieving improvements in the area, some suggested by third parties, but this proposal must be considered on its own merits without comparison to other possible solutions”.

The aim of this inquiry is not to determine which of the various schemes put forward over the years is “best” in some subjective sense. Nor is it the purpose of this inquiry to find the “ideal” proposals. That is not the relevant test in planning terms. Having said that the Council has given detailed and careful consideration to the Call-in proposals and does consider them to be the best short-term scheme for the site.

38. The Twickenham Pool site has a history of failed proposals for its redevelopment. It is a site which has been out of beneficial use for over 20 years. The Call-in proposals represent the first step in overcoming the blight that has affected this site. As the Council’s 28 January 2004 press notice (Inquiry Document 12) stated “The scheme is designed to start the regeneration of the long-term derelict Twickenham Pool Site, by removing blight, providing public open space and children’s play areas.”

The matters upon which the Secretary of State wishes to be informed

(i) Whether the proposed development would prejudice proposals for the redevelopment of the former swimming pool site as a whole

39. This issue was dealt with in detail by Mr McKeivitt in his evidence (from the land-owner perspective), and is also considered in Mr Freer’s evidence (from the planning perspective).

40. The main points in Mr Freer’s evidence were as follows:

- a. the Call-in proposals are intended as a short term scheme pending the comprehensive redevelopment of the site. The Council fully intends to redevelop the Twickenham Pool Site in the longer term. The Council has set out a timetable for the long-term redevelopment and has allocated resources to the process;
- b. the Call-in proposals have been specifically designed as an interim measure pending the intended redevelopment of the Twickenham Pool Site. New built development within the scheme is limited to the retaining wall and brick planters,

new steps from The Embankment and a sloped access from Wharf Lane. The remainder of the scheme comprises play equipment, seating and other furniture, and both hard and soft landscaping. None of these features will present any difficulty in removing from the site when the redevelopment of the site commences and it is fully intended that they will be removed at that time;

- c. the removal of the Pool Building would not prejudice the redevelopment of the former Swimming Pool site as a whole. This view is supported by a number of matters:
 - i. the T1 Proposal does not, either in the AUDP or the FRUDP, propose or rely upon the retention of the Pool Building. To the contrary, the demolition of the Pool Building is necessary to facilitate the redevelopment of the site as envisaged by Proposal T1. In this context, the demolition of the Pool Building at this time actually aids the longer-term redevelopment of the site by achieving the necessary first step in the redevelopment process;
 - ii. the 1991 Inspector in his report (CD10, para. 11.39 said “ ... I see no prospect of re-use of the baths nor benefit in the retention of the building”. Further that same Inspector in para. 11.39 of his report indicated that “it might be better to take a long-term view, making temporary steps for temporary uses which do not preclude a satisfactory use in a satisfactory form of development at some future time”. Mr Freer’s evidence was that the Council’s short-term proposals for this site are entirely consistent with the step-by-step approach advocated by that Inspector;
 - iii. the UDP Inspector in his recent report said at para. 11.7 “I conclude that the building should not be retained in any scheme”;
 - iv. the Council commissioned Donaldsons to appraise the feasibility and commercial viability of reinstatement of the Pool Building for various alternative uses: see Appendix 4 to Mr McKeivitt’s evidence. This is considered further below in relation to the second issue the FSS has asked to be informed on. However, one of the conclusions reached was that “Retention of the Pool Building would represent a very serious constraint on the future development potential of the site” (see para. 4.3, but note also para. 4.1);
 - v. as noted above the various amenity groups that make up TSG consider that the “best use of the site will ultimately involve demolition of the

existing buildings and sees no reason why the process of demolition should not start now” (see para. 1.3 of the TSG proof);

- d. the Application Site takes in only a part of the larger Twickenham Pool Site. It is not envisaged that the larger proportion of the site will be subject to an interim scheme pending the redevelopment of the site. However, the larger part of the site will also need to be cleared to facilitate the implementation of a permanent scheme pursuant to Proposal T1. Mr Freer concludes “[i]n any long-term scheme, the area covered by the short-term scheme on the smaller Application Site will be developed in conjunction with the remainder of the site” (at para. 6.6) and “that the applications will not prejudice the redevelopment of the former Swimming Pool site as a whole” (at para. 6.8).

41. Mr McKevitt in section 5 of his evidence provided an overview of the Council’s current strategy for the Twickenham Pool Site including alternative proposals put to and considered by the Council since 2002. He explained in his evidence that the Council has chosen not to pursue the alternatives which were suggested and outlined the reasons. He indicated that instead, following careful consideration of all the options, the Council had taken a strategic approach to the redevelopment of the Twickenham Pool Site. He notes that “[t]his is designed to improve the likelihood of a successful long-term redevelopment taking place. The difficulties with previous schemes have been wide-ranging and complex and include: problems in achieving financial viability, wide-ranging public aspirations, the limited capacity of the site and the physical constraints that apply to it”⁸.

42. Table 1 in Mr McKevitt’s evidence sets out in detail the elements of and timetable for determining and implementing a long-term scheme for the Twickenham Pool Site⁹. This process includes, inter alia, the completion of the Twickenham Challenge process which is underway, the Council’s consideration of the UDP Inspector’s report and modifications

⁸ See para. 1.3.4 of Mr McKevitt’s proof.

⁹ Mr Chappell has pointed out that the duration of the short-term scheme would only appear to be 3 years according to table 1 – as the timetable in section 5 of Mr McKevitt’s proof describes implementation commencing in 2007. In his EC Mr McKevitt explained that the important point is that implementation can only happen once there is a decision on the planning application for the long-term scheme. It may be later due to the call-in. Post planning, there will be many issues to be finalised which will impact on an actual start date – all can be considered as part of the implementation phase. They include: (i) completing the s. 106 Agreement; (ii) depending on the scheme, there may be other regulatory approvals needed prior to works on site – e.g. highways/traffic/parking; (iii) possibly, environmental assessment & ecology; (iv) production of tender documents & appointment of building contractor; (v) satisfaction of various conditions – e.g. archaeology. All will take time and will impact on the start date. The timetable is “ideal world” and may be subject to alteration based on events.

to T1 and the adoption of a planning brief for the site. It is a process which realistically will take 5 years. At paras. 5.4.5 – 5.4.8 Mr McKevitt says:

“5.4.5 The process set out by the Council is designed to allow a reasonable timeframe in which to explore the feasibility of the Twickenham Challenge proposals and sufficient time for proper consideration at each stage of the commercial development process. It is a prudent process, which will rigorously test the feasibility of what is proposed at each stage, and allow for public feedback throughout. There will be a comprehensive audit trail. The Council has taken the view that it is not prudent to attempt an “instant” solution to the question of a long-term scheme (despite some public pressure to do so ... This demonstrates that it will be approximately 2009 before the Council envisages that the site as a whole will be redeveloped as part of a long-term scheme, and possibly 2010 if the long-term proposal is subject to call-in.

5.4.6 The timetable and task breakdown is further evidence of the Council’s commitment to implementing a long-term scheme that addresses the whole of the Council owned land. This, in turn, reinforces both the short-term and temporary nature of the proposals subject to this inquiry.

5.4.7 It might be argued that the Council cannot be certain that it will be possible to achieve this timetable and that the proposals subject to this inquiry might exist for longer than (approximately) five years. The Council’s response is that (as demonstrated in the evidence of Dr Edis and Mr Freer at sections ...) there is nothing at the Application Site which is worthy of retention and, in the circumstances described above, the proposals would still represent a major improvement and provide beneficial public use pending a long-term redevelopment. Whilst delay might be possible, the Council will still be working to implement a long-term scheme and, to the Council, the Call-in proposals are highly preferable to leaving the Application Site unimproved.

5.4.8 The Council’s strategy for Twickenham Riverside is predicated by the evidence that previous attempts to redevelop the former pool have sought to meet too many aspirations on a small and controversial site. The emphasis in the Council’s subsequent policy-making has been to reduce and simplify the aspirations to acknowledge that the competing demands cannot be met.”

43. Mr McKevitt in section 8 of his proof deals with all of the possible grounds upon which it might be alleged that the Call-in proposals could be prejudicial to proposals for the redevelopment of the site as a whole and demonstrates why none are substantiated.

44. The grounds on which the Call-in proposals might be argued to prejudice proposals for the redevelopment of the whole of the Twickenham Pool Site and the Council’s response are summarised below:

a. **That demolition of the Pool Building would be prejudicial to proposals which seek to reuse the building as part of a wider redevelopment of the site:**

The Council’s response is as follows:

i. **The TRTG scheme:** the Council has previously considered a proposal from TRTG for the reuse of the Pool Building at the December 2002 Cabinet – see CD19. It might be argued that the implementation of the Call-in proposals could be prejudicial to the TRTG proposals. However,

on the basis of detailed evidence, appraisal and questions put to the sponsors of the proposal, the Cabinet resolved that it did not wish to pursue the proposals. The reasons were the high levels of risk and uncertainty attaching to the proposals. The Cabinet at the February 25 2003 meeting considered the proposals further and the Cabinet concluded there was no new evidence that lent weight to an alteration of its previous decision (see CD 21). TRTG as we know complained to the Ombudsman about this decision but he saw no basis for an investigation: see the XX bundle (Inquiry Document 5) at p. 21 ff. As Mr McKevitt explains in para. 8.6 of his proof “[t]he Council applied a reasonable range of appraisal criteria. To the Council’s satisfaction, it has been diligent in its appraisal and found that it could not, on prudent grounds, support the implementation of the proposals. The Council is not compelled to revisit this matter”;

- ii. **Mr Wren’s river uses:** Mr Wren’s main argument on “prejudice” was that the Pool Building could provide “a significant amount of accommodation for public and river related uses” and that the removal of the Pool Building would prejudice this. However, this is flawed:
 1. Mr Wren’s proposals for using the Pool Building for “public” or “community” and in particular “river related uses” are entirely speculative. He has provided no details nor any indication of who would provide such uses notwithstanding that the concept of such “uses” has long been a feature of the TRTG proposals. TRTG have not provided any evidence of demand from organisations able or willing to occupy the redeveloped facilities. Mr Wren has been involved with TRTG for close to 3 years and is party to these matters. The best that Mr Wren can do is to cite “potential” uses¹⁰. Mr Wren has had a sufficient period of time to identify real demand for his putative river related uses scheme – since it is so similar to what was already proposed by TRTG. In the Council’s view, these potential river related or community uses as postulated by Mr Wren are without substance;
 2. Mr Wren’s position is made even more untenable because one of the proposals being considered as part of the Twickenham

¹⁰ It is of some note that in his XX of Mr Double (TSG) that Mr Wren had to retract storage of boats from “river related uses”. Mr Double had said “how would you get the boats to the river”. Mr Wren then suggested “you might be able to store canoes”.

challenge is the Environment Trust for Richmond-Upon-Thames “River Centre”: see CD21, the 25 February 2003, Cabinet report and the attached letter from the Trust (referred to by Mr Freer in RX). This is the only specific “river related uses” proposal to come forward. The Trust come under the TSG umbrella and support the Call-in proposals. Plainly the Trust does not see the removal of the Pool Building as prejudicial to its proposals. It is significant that the Twickenham amenity societies (including the Trust) do not argue in this inquiry for the retention of the Pool Building and “see no reason why demolition should not commence” (see section 1(c) of TSG statement of case December 12 2003 : see CD 7). It is submitted that the proper weight should be attached to this expression of public opinion. It will be recalled that the TRTG planning application in 2001 was accompanied by a 1300 signature petition calling for the immediate demolition of the Pool Building in order to implement the TRTG scheme. Mrs Hewett under XX from Mr Wren explained that on occasions when she has canvassed local opinion on the Twickenham Pool Site for TSG 95 out of every 100 people who stop to talk to her suggest that the Pool Building should be demolished;

- iii. **Other schemes seeking to retain the Pool Building:** this matter is considered further below in relation to the second issue upon which the FSS seeks to be informed but in short it is the Council’s view that if relevant it has satisfied the broad criteria in paras. 3.16 to 3.19 of PPG15 by exploring the retention or reuse of the Pool Building;
- b. **That it may not be possible to achieve a long-term scheme within a five-year (or reasonable) period and, if not, that the Call-in proposals might become by default a longer-term scheme. The argument for prejudice in this situation could be that the longer the proposals remain, the more difficult it might become to remove them due to the pressure of public opinion:** The Council’s response is:
 - i. As Mr McKeivitt explained in his EC it is impossible to predict the future with total certainty but the Council has put in place a detailed plan of activities to achieve a redevelopment of the whole Twickenham Pool Site. The Council has also committed the financial and human resources

required to implement the programme (see section 5.3.2 of Mr McKevitt's evidence);

ii. "There continues to be a strong interest from property developers interested in working with the Council and, failing the impact of a major external risk, the Council is confident that it will achieve its objectives. The Council considers that the probability of failure to secure a long-term scheme is low since the risks will be identified and managed as part of the process. The Council will also explicitly address the planning difficulties with previous schemes as an integral part of its research and development": see para. 8.10 of Mr McKevitt's proof;

iii. the risk that it might not be possible to achieve a long-term scheme within 5 years or at all exists but would exist irrespective of whether or not the Call-in proposals were implemented therefore, the real issue is whether or not the Call-in proposals as they stand improve the Application Site. The Council submits that the Call-in proposals represent a major improvement to the character and appearance of the conservation area (see below) and if, for any reason, it were not possible to achieve a long-term scheme to the proposed timetable, they would remain a major improvement over leaving the Application Site in continued dereliction with no public access. As Mr McKevitt explains in section 6 of his proof in the absence of planning approval for the Call-in proposals, the Council sees little (if any) prospect of an alternative interim scheme to improve the Application Site or any part of the Twickenham Pool Site pending its long-term redevelopment.

c. **That there are planning arguments which result in a conclusion that the proposal could be prejudicial:** the concern here is that public opinion might be a later factor for the retention of the Call-in proposals. However, the Council submits that this is not in reality going to be an impediment to any long term redevelopment of the whole of the Twickenham Pool Site. The Council have made clear (see above) that any long term scheme will include open space and even TRTG (who bitterly oppose the Call-in proposals) do not suggest that the open space in a long term scheme would have to be in the same place as in the short term scheme. Indeed TSG go as far as to suggest that the open space should indeed be elsewhere in a long term scheme. As Mr McKevitt says in para. 8.19 of his proof "[f]ollowing decades of dereliction and public exclusion, the Council ... believes that the Call-in proposals send a clear signal to the property development community that the Council is committed to public use of the former pool site";

- d. **That if funding for the Call-in proposals were to be offset against a future residual value payable to the Council, this could pre-judge the development density of a future scheme:** This is a non-point. If there were a requirement that the capital funding for the Call-in proposal would be offset against a future payment to the Council from the long-term redevelopment of the site, it could be argued that this would be prejudicial of a future attempt to redevelop it. This would result from a requirement that at least part of the land would need to be devoted to commercial development, to achieve a residual value equal to the Council's capital expenditure on the Call-in proposals. However, there is no such requirement and the Call-in proposal is funded from the Council's capital programme. The Cabinet has also agreed that it will fund the maintenance costs of the proposals from the Council's revenue budget. Therefore, there is no financial argument for prejudice;
- e. **That the implementation of the Call-in proposals would create a legitimate public expectation of rights of way, use or access to the Application Site and were such claims to be upheld, the Council might not be able to remove the proposals and, by virtue of the remaining uses and land removed from the equation, this could prejudice any long-term scheme:** The Council has consistently identified that the Call-in proposals are of a short-term and temporary nature and will continue in the same vein. Mr McKeivitt in para. 8.21 ff of his proof outlines the Council's strategy to avoid the creation of permanent public rights of way or the establishment of Village Green rights so as to ensure that the Call-in proposals would not be prejudicial to the implementation of a wider redevelopment of the whole site however long that takes.

Conclusions on the first issue

45. In conclusion the Council have presented a compelling case as to why the Call-in proposals would not prejudice proposals for the subsequent long term redevelopment of the Twickenham Swimming Pool Site as a whole.

(ii) The relationship of the proposal to government policy advice in PPG15 and in particular whether the proposal would preserve or enhance the character or appearance of the conservation area and whether demolition should be permitted in the absence of acceptable and detailed proposals for redevelopment of the site as a whole

46. In order to assess the relationship of the Call-in proposals to government policy advice in PPG15 it is necessary to consider a number of sub-issues:

- a. **Sub-issue 1: Does the Pool Building make a positive contribution to the conservation area?**
- b. **Sub-issue 2: If the Pool Building is determined to make no or little or no clear-cut positive contribution to the conservation area, should in any event demolition be permitted in the absence of acceptable and detailed proposals for redevelopment of the Twickenham Pool Site as a whole?**
- c. **Sub-issue 3: If it is determined that the Pool Building does make a clear-cut positive contribution, have the Council satisfied the “broad criteria” in paras. 3.16-3.19 of PPG15 relating to (i) the condition of the building, (ii) the adequacy of efforts to keep it in use, and (iii) the merits of alternative proposals for the site?**

47. Underlying a number of these sub-issues is the issue of whether the Call-in proposals preserve or enhance the conservation area and hence meet the relevant statutory test.

Sub-issue 1: Does the Pool Building make a positive contribution to the conservation area

48. This sub-issue involves meeting head on Mr Wren’s “strong plea” for retention of the Pool Building on the basis of its architectural and historical merits. A plea not echoed by TSG¹¹ (or in the end TRTG¹²).

49. Dr Edis’ evidence looked at previous assessments of the Pool Buildings. He reached the conclusion that “[t]he overwhelming balance of professional opinion ... is that [the Pool Building] does not make a positive contribution to the character or appearance of the conservation area” para. 5.1.1.

¹¹ Mr Wren lives in Hammersmith and so is not a local resident or indeed a resident of the Borough at all so far as the Council’s proposals are concerned . Mr Wren’s EC was that he is a boat owner, river user and visitor to Twickenham (and in particular Twickenham Riverside) for over 20 years. Despite this Mr Wren (in XX) accepted that nothing had caused him to take an interest in the Twickenham Pool Site until (see para 1.3 of his proof) he was asked by TRTG to step in for the late Mr Hathaway and present his scheme to the planning committee in July 2001. Mr Wren confirmed that it was in his professional capacity as an architect that he was asked to step in and act as advocate for the TRTG scheme in 2001.

¹² Mr Wren’s continuing involvement with TRTG needs to be considered briefly. In a letter dated 16 January 2003 (see Mr Wren’s appendices at A1.2 p. 21, para. 2) he stated that he had not “been directly involved” with TRTG since July 2001 in developing their proposals. However, Mr Wren accepted: (i) in so far as TRTG has a membership at all (see below) he was at least in the past a leading “member”; (ii) in 2003 Mr Wren made a joint application with Mr Chappell – a leading TRTG member - for the spot listing of the Pool Building. TRTG on its website canvassed support for this application: see the XX bundle (Inquiry Document 5) at p. 19 – 20; (iii) TRTG and Mr Wren co-ordinated their evidence both to this inquiry and at the UDP inquiry; (iv) Mr Wren was in 2003 involved in making complaints to the Council and the Ombudsman along with Mr Chappell about the Council’s failure to adopt the TRTG scheme, which scheme entailed the loss of nearly all the features Mr Wren now says are of importance.

Previous assessments

50. Considering the previous assessments:

- a. **The 1991 Inspector's Report:** see CD10 - the following is of note:
 - i. the applicants at that inquiry and the Council submitted at para. 5.18, p. 11 that "[t]he Baths buildings possessed no architectural distinction; it was bland and self-effacing, and had no features which epitomised its riverside location. It made no positive contribution to the architectural quality of the area. *There was no objection to its removal*" (emphasis added);
 - ii. in relation to this last point it is plain if one looks at pp. 62 – 63 of the Report that numerous local amenity and residents groups as well as private individuals appeared at the inquiry to fervently oppose the scheme, however, not one objected to the loss of the Pool Building itself (see pp. 26 ff of the Report). Mr Wren thought this assisted him and left the door open for him to argue retention but as Dr Edis explained in RX the failure of anyone to raise retention in 1991 is a point that counts against Mr Wren's case;
 - iii. Mr Freer at para. 2.5 of his proof explains:

"It may be noted that the Inspector's decision makes no reference to an application for Conservation Area Consent to demolish the pool building, a prerequisite of the proposals then before the Inspector. In fact, an application for Conservation Area Consent was considered by the Council at the same time as the planning application for the redevelopment of the site (90/1128/CAC). At that time, the Council sought the views of a Conservation Areas Advisory Committee on all applications for development within conservation areas. That Committee, which comprised a combination of local architects and representatives from local amenity societies, raised no objection to the loss of the existing buildings subject to a satisfactory replacement scheme. The application for Conservation Area Consent was approved by the Council, subject to the condition that the building was retained until the development of the site commenced."
 - iv. The Inspector's conclusions pertinent to sub-issue 1 were that:
 1. the Twickenham Pool Site is an integral and important component of the conservation area, and that views from the south, south-east and east are of great importance and that the relationship of the site to King Street in terms of connection and permeability is also a matter for consideration (see paras. 11.7 – 11.10;

2. however, “[t]he developed part of the site is, on the face of it, undistinguished, with the large building of the Baths on its frontage masking the open-air pool ...” (emphasis added, see para. 11.4);
 3. “[t]he present main building on the site tends to dominate the riverside” (para. 11.8) – the Inspector’s concern here being that the Pool Building was out of scale with its surroundings a concern echoed elsewhere (see below);
 4. in para. 11.10 in describing, inter alia, the Pool Building the Inspector referred to it as not conforming to the characteristics or scale of the surrounding buildings. He added “A new building on the site should not echo the non-conformity of the Baths Building”;
 5. in para. 11.39 the Inspector said “[t]he site is wasted as it is, and I see no prospect of re-use of the Baths nor benefit in the retention of the building” (emphasis added).
- v. the then Secretary of State for the Environment, the predecessor of the FSS, wholly agreed with the Inspector’s conclusions;
 - vi. as Dr Edis explained in response to an IQ the weight to be placed on the decision is not reduced by the fact that the relevant guidance at that time was contained in Circular 8/87 because the advice on demolition of unlisted buildings and conservation areas was not substantially different to that in PPG15.
- b. **The Dawnay Day scheme:** It is next relevant to consider views expressed in the context of the Dawnay Day scheme (01/2584/FUL) which like the Marks & Spencer proposal in 1991 proposed demolition of all the buildings on the Twickenham Pool Site. The Officer report relating to this application is in CD17 attached to the Council’s evidence to the UDP inquiry. The relevant points are as follows:
- i. EH objected to the proposal (see p. 10 of the report) but *not* on the basis that the Pool Building should be retained. The views of EH are considered in more detail below. However, the actual letter written by EH (dated 11 December 2001) is in CD18 and records EH’s view as being that the buildings on the Twickenham Pool Site are of “no distinction” – there was much discussion between Dr Edis and Mr Wren on the meaning of this letter. However, the most important point is not the detail

- of what was said but the fact that EH did not object on the basis that the Pool Building should be retained;
- ii. the Conservation Area Advisory Group (whose function and membership is referred to above in the quotation set out above from Mr Freer's proof) objected to the scheme but again *not* on the basis that the Pool Building should be retained (see p. 11 of the report);
 - iii. furthermore representations were received objecting to the Dawnay Day scheme from the Twickenham Society, Eel Pie Boatyard, the Eel Pie Island Association, Eel Pie Island Slipways, the Environmental Trust for Richmond upon Thames, the Thames Eyot Lodge Residents Association, Richmond Yacht Club, HANDS, the LA21 Building Responsibility Group, the Richmond and Twickenham Green Party, the Richmond Environmental Information Centre, the River Use Working Group, the Strawberry Hill Residents Association as well as about 150 letters from individuals (see p. 11 of the report). These representations raised between them 38 different objections to the scheme. However, there was no objection on the basis that the Pool Building should be retained;
 - iv. the S/S called-in the Dawnay Day proposal (see Inquiry Document 6). However, neither the grounds for the call-in nor the issues identified by the Secretary as State as matters he wished to be informed upon included any concern for the loss of existing buildings on the Twickenham Pool Site;
 - v. Mr Wren himself in objecting to the Dawnay Day scheme wrote (see Mr Wren's appendices at A1.1, p. 19, para. 11 "the existing swimming pool building is of no great merit, looms large on the embankment, and cuts off the rest of the site from the river ...");
- c. **Mr Wren's previous views:** One of the difficulties Mr Wren faces in making his strong plea for the retention of the Pool Building is that the view he expressed in the letter quoted from above is plainly inconsistent with his present views. Furthermore, it is difficult to see any convincing reason for that change of view. In para. 1.5 of his proof Mr Wren tries to explain his change of view. His evidence is that his mind was opened to "the qualities of the pool building" and "the benefits or repairing and converting the whole of it to new uses" by two other letters received by the Council in response to Cabinet's 10 December 2002 report (CD19). There are a number of points:
- i. Mr Wren both in his written evidence and in XX appeared unable or unwilling to appreciate that the architectural and historical qualities of the

Pool Building (if any exist) are not necessarily bound up with any putative benefits of its reuse. There are as PPG15 recognises 2 issues: (i) what are the architectural and historical qualities of a building; and (ii) what are the possibilities/ benefits of re-use of that building – the focus is instead on the merits of the proposed development. If one determines that a building lacks any architectural and historical qualities PPG15 does not require one to consider the possibilities and benefits of its re-use. If on the other hand one decides there are architectural and historical qualities to a building – such that it makes a positive contribution to the character and appearance of the conservation area - then it becomes incumbent to look at the possibilities and benefits of re-use. This is considered elsewhere in this document;

- ii. if one looks at the letters which Mr Wren says “opened his eyes” it is plain that neither says anything of any substance about the architectural and historical qualities of the Pool Building as opposed to making somewhat speculative assertions about the possibility of their re-use (an issue considered further below);
 1. the first letter from Mr Landolt (see Mr Wren’s appendices at A1.4, p. 24 – 25) is almost wholly focuses on the re-use issue. At p. 24 in the last para there is a reference “to retention of the art deco central building”. That is the only reference to architectural and historical qualities in that letter. Mr Wren’s attempt in XX to explain his conversion on the basis of this letter was, it is submitted, wholly unconvincing. At one point Mr Wren appeared to be suggesting that he had not prior to reading Mr Landolt’s letter appreciated that the Pool Building was “art deco”. This hardly sounds credible given that Mr Wren is a by profession an architect;
 2. the second letter from Mr Sarhage (see Mr Wren’s appendices at A.1.3, p. 23) does not advance matters any further from Mr Wren’s perspective. Again almost all of the letter is focussed on assertions as to possible re-uses of the Pool Building rather than looking at the architectural and historical qualities thereof. The only reference of relevance is in the 3rd para. where Mr Sarhage opines that the Pool Building is “a beautiful period building with historical background”. It is quite frankly inconceivable that this could have persuaded a professional architect to alter his view

from being that “the existing swimming pool building is of no great merit, looms large on the embankment, and cuts off the rest of the site from the river ...” to “[t]he classical symmetry, scale and simplicity of the composition give the building grandeur and repose ...” (see para. 2.19 of Mr Wren’s proof);

- iii. if, one is not persuaded that these letters could possibly have caused such a marked change of view by a professional architect there remain only 2 possibilities neither of which very much assists in adding any weight to Mr Wren’s plea for retention:
 - 1. first, Mr Wren’s opinion is easily changed;
 - 2. secondly, Mr Wren’s change of opinion is based on a synthetic case to suit his (and TRTG’s) underlying motive, namely to oppose the Council scheme at all costs;
- iv. furthermore, it was plain from Mr Wren’s answers in XX (despite an attempt by him to backtrack later on) that if one analyses in detail the features of the Pool Building that Mr Wren now believes to be of architectural and historical quality almost all occur at first floor level either internally¹³ or externally: see para. 2.19 of Mr Wren’s proof. As a result Mr Wren’s present plea for retention has to take on board his move from being a leading member of TRTG and an advocate of its scheme to the 2001 planning committee to being someone opposed to the TRTG scheme;
- d. **The 2001 TRTG Scheme and its variants:** The planning permission TRTG obtained in 2001 with Mr Wren’s assistance involves the demolition of the whole of the first floor resulting in the loss of nearly all the features Mr Wren now says are of architectural and historical interest. It would leave in place only the ground floor which on its own even on Mr Wren’s analysis is of no or very little architectural and historical interest. This is compounded by the fact that the TRTG scheme also entailed re-cladding the ground floor and “punching several holes [arches] in it”¹⁴! There have been several variants of the TRTG scheme proposed since 2001. However, all involve loss of the entire first floor of the Pool Building. In relation to the views expressed in the context of the TRTG planning permission the following points are relevant (see CD17 for the officer report):

¹³ NB as Dr Edis made clear in XX internal features of a non-listed building cannot by definition make a contribution to the character and appearance of the conservation area.

¹⁴ To use Mr Stearman’s words.

- i. EH raised no objection based on loss of any features of historic and architectural importance to the Pool Building (see p. 2 of the report);
- ii. similarly the Conservation Area Advisory Committee (see above) raised no objection based on loss of any such features (see p. 2 of the report);
- iii. no individual or amenity group which made representations (i.e. the Eel Pie Island Association and the Friends of Twickenham Green) raised any such objection (see pp. 2 - 3 of the report);
- iv. the officer comments (p. 4ff of the report) included the following:
 - 1. the TRTG scheme did not meet all the requirements of T1 and thus had to be considered a departure from the UDP;
 - 2. “However, the proposal does respond to other important aspects, namely a part removal of the unattractive baths building ...”;
 - 3. “[t]he removal of part of the building should improve the appearance of the conservation area ...”.
- v. The TRTG application was referred to the Secretary of State because it was a departure from the UDP: see Mr McKevitt’s appendix 1. The Secretary of State decided not to intervene;
- vi. Mr Freer in para. 2.8 of his proof explains “[t]his application was not accompanied by an application for Conservation Area Consent. It was considered at officer level that Conservation Area Consent was not required for the proposals under the Shimizu principle, on the basis that the proposals involved only the partial demolition of the building. Therefore, an application for Conservation Area Consent was not sought”. The significance of this is considered elsewhere in this document;
- vii. the TRTG planning permission is extant and involves the partial demolition of the pool building, including all the features Mr Wren now says are of interest. It has been explained above why for these purposes it is right to proceed on the basis that this planning permission could be implemented without conservation area consent being required. However, it is, of course, the Council’s view that the TRTG scheme is not viable. Does this matter? No. The Council, do not rely upon the TRTG planning permission as a fallback. But it is right to point to that planning permission as establishing the principle of partial demolition. It is all the more important because the Secretary of State must be taken to have implicitly accepted the principle of partial demolition by not calling-in the 2001 application: see McKevitt Appendix 1.

e. **Views expressed in relation to the Call-in proposals** (see CD3, the report to the Planning Committee on 31 July 2003):

- i. as mentioned above in total there were 14 objections by individuals – and for the first time one of the grounds of objections raised (by Mr Wren if not others) was “[l]oss of building that is an important feature in the area and is worthy of retention” (see p. 27);
- ii. EH had “no objections to the scheme noting the building makes no particular contribution to the character and appearance of the conservation area ...” (see p. 27 and CD18 for the letter in full);
- iii. the relevant local amenity groups the Eel Pie Island Association and the York House Society were “broadly supportive” of the Call-in proposals and certainly raised no objection based on retention of the Pool Building;
- iv. in terms of the officer comments the following are relevant (p. 29):
 1. “English Heritage supports the proposal ... officers take the view that if properly detailed and landscaped this will benefit the area both visually and in terms of activity”;
 2. “The building has no intrinsic visual value, the DCMS recently declined to grant it Listed Building status. English Heritage agree with this view”;
 3. the TRTG scheme granted planning permission in 1991 (see above) “seeks to remove the whole of the top floor of the building. However, it is not considered that a planning argument has been made that, to retain part of the building, should prevent the current planning proposals from being approved”. This is considered further below.

f. **The UDP Inspector’s Report** (Inquiry Document 2): in para. 11.7 the Inspector concluded:

“Mr Wren makes a strong plea for the retention of the lido building, a 1930s building in type and appearance but now, as other examples of its kind elsewhere, redundant. Although its design demonstrates some details characteristic of such buildings of that period it is not recognised in a 2003 assessment by English Heritage and the Department of Culture, Media and Sport as worthy of listing as a building of architectural or historic interest. Indeed, I note it was described in the 1991 inspector’s report on an inquiry into the redevelopment of the site as undistinguished. The *Thames Landscape Strategy* in my view rightly describes the building as out-of scale with the rest of the waterfront and introducing a rather bleak dead end to the Embankment. Furthermore, its long façade cuts off the rest of the site from the Embankment and weighs against the objective of extending the Riverside ambience landward from the Embankment. I conclude that the building should not be retained in any scheme.”

g. **The role of EH:** When consulted on applications for demolition and redevelopment, officers of EH have never objected on the basis of the loss of the Pool Building (see CD 18). There are a number of points:

- i. it should be noted in this context that one of the chief functions of EH is to provide advice to the FSS and SSMCS on the listing of buildings and on planning applications affecting the historic environment (Annex A6 and A9 of PPG15) accordingly great weight can and should be attached to their views;
- ii. CD18 and the documents referred to above deal with EH's non-objection to demolition of the Pool Building on several occasions over the last 20 years;
- iii. the most authoritative recent assessment of Twickenham Pool Site (with the exception of that of Dr Edis, which is considered below) is by Elaine Harwood, an EH inspector specialising in 20th century architecture who was consulted by the DCMS in relation to an application for spot-listing in 2003 made by Messrs Wren and Chappell:

1. Harwood's written report on the building was completed on 6 May 2003, and her recommendation was that the building should not be listed because the relevant criteria were not fulfilled. The SSCMS agreed (again see CD18). In particular, the report notes the following points about the Twickenham Pool Site:

"It was derelict when it was looked at as part of a survey of London Lidos in 1991 and while its location and art deco façade give it an appropriate joie de vivre the building's interest is skin deep. Its never had the three-dimensional character and attention to detail found in Lidos of comparable date erected by the London County Council such as the listed example at Parliament Hill fields and that being recommended at Brockwell Park. The building would be very unlikely to have achieved the high standard record for a Lido to be listed even if it were in good condition. While the façade is similar to that at the listed Tinside pool in Plymouth the massing of Tinside building and pool which form an integral composition on several levels set it way above the standard of Twickenham" (emphases added, CD 18)

- iv. The EH report was as it indicates on its face informed by the Thirties Society publication Farewell my Lido (1991) of which Harwood was a co-editor. It is not unimportant that the gazetteer in that book (see Inquiry Document 9) makes no mention of the Twickenham Pool Site, despite the fact that (i) it was considered by Harwood (as her EH report indicates); (ii) at that time (i.e. 1991) it was the subject of a well publicised

application and appeal involving its total demolition (the Marks & Spencer scheme); and (iii) Richmond Baths (in the Old Deer Park, Twickenham) is mentioned;

h. **The 11th hour objections of the Twentieth Century Society, SAVE and the Ancient Monuments Society:** Mr Wren was as recently as the UDP modifications inquiry late last year a lone voice in seeking the retention of the Pool Building. However, he has since canvassed support from several national societies. There are a number of points in response:

- i. first, it is clear that none has in the context of any number of the other proposals to demolish the Pool Buildings over the last 20 years seen fit to object;
- ii. secondly, these societies have only objected now because of Mr Wren's prompting;
- iii. thirdly, they have done so, so it would seem, solely on the basis of the material provided by Mr Wren. None had the benefit before objecting of seeing the Council's case and in particular Dr Edis evidence. None sought to make any contact with the Council to discuss its proposals. Nor does it appear that many of the previous views expressed about the Pool Buildings (see above) were reported to these societies: Mr Wren's material did not include any reference to the comments of the 1991 Inspector, EH's representations on previous schemes, the assessments of the Pool Building in the Thames Landscape Strategy Report (CD 27) or the Twickenham Riverside Conservation Area Study (CD13). Further, the material Mr Wren did send to these societies was the same material he presented to the UDP Inspector in making his "strong plea" for retention and we know what the UDP Inspector's conclusion was on that. Mr Wren has not produced any new evidence to that he presented at the UDP inquiry he has merely canvassed *some* support on the basis of the very same material;
- iv. fourthly, none of these societies appear to have visited the Pool Buildings, certainly none have contacted the Council to seek access;
- v. fifthly, the Twentieth Century Society's position appears wholly untenable given that in 1991 the Thirties Society (now the Twentieth Century Society) published *Farewell my Lido*, which amongst other things analysed the social and historical background to the construction of open-air swimming pools across Europe in the inter-war period and

which we know considered but failed even to list the Twickenham Pool in the gazetteer;

- vi. sixthly, SAVE's letter makes wholly unfounded and unsupported assertions about the viability of the re-use of the Pool Building and the community support for this¹⁵. It appears this is all based on the Mr Sarhage correspondence considered below.

51. Thus in order for Mr Wren's "plea for retention" to be accepted it is necessary for the FSS to determine:

- a. that EH, his statutory adviser on the listing of buildings and on planning applications affecting the historic environment has consistently over a number of years got it wrong in not seeking to preserve the Pool Building on several occasions over the last 20 years;
- b. that two previous Inspectors one in 1991 and one this year and in the context of UDP modifications got it wrong in indicating that the Pool Building should not be retained. Mr Wren in XX tried to suggest that he was producing to this inquiry important new evidence not available to the UDP Inspector. On analysis this came down to (i) the various society letters he had canvassed; and (ii) Mr Wren's enabling development scheme. Both matters are considered in detail elsewhere. Suffice is to say that the latter cannot possibly affect the view taken of the merits of the Pool Building;
- c. that the various individuals and local amenity groups who have campaigned in relation to Twickenham Riverside over the last 20 years got in wrong in never seeking to object to development on the basis of the loss of the Pool Building;
- d. that the Council in all the assessments it has undertaken of the Twickenham Pool Site in the context of various development proposals, in the AUDP and FRUDP and in the *Thames Landscape Strategy* and *Twickenham Riverside & Queen's Road Conservation Area Study* (see below) got in wrong in not seeking to preserve the Pool Building;
- e. that the various national societies such as the Twentieth Century Society, SAVE and the Ancient Monuments Society in not objecting to the loss of the Pool Building in the context of any of the various proposed redevelopments of the Site, until Mr Wren's intervention, were negligent.

¹⁵ The weight of local public opinion is that there is no affection for the building & no in principle objection to its demolition. Mr Wren's advocacy for TRTG scheme in July 2001 supports this view (with 1300 signature petition requesting *immediate* demolition).

- f. that the FSS himself was wrong when he called in the Dawnay Day scheme not to raise in any form the issue of the retention of the pool building. The FSS would also need to have erred similarly in the matter of the TRTG scheme involving substantial demolition.

Dr Edis' evidence

52. Dr Edis has produced what is (notwithstanding Mr Wren's criticisms) unquestionably the most comprehensive assessment of the contribution made by the Pool Building to the character and appearance of the conservation area there has been to date.

53. The essential points in Dr Edis assessment are:

- a. Twickenham Pool was essentially an engineering project¹⁶;
- b. in the absence of any significant architectural contribution, and in view of the numerous strong professional opinions to the effect that Twickenham Pool is not of special or local interest and should not be preserved, the only remaining consideration is to assess the building against EH's "questions to be asked" when considering the demolition of unlisted buildings within conservation areas: see EH's guidance in *Conservation Area Practice*, first issued in 1993 and subsequently revised;
- c. that guidance lists ten items relating to the contribution made by unlisted buildings in conservation areas and "is a useful starting point from which to begin an examination of an unlisted building within a conservation area, but it is necessary to use it as a means of forming a balanced judgement, not as a list of strict criteria" see para 4.3.4 of Dr Edis' evidence¹⁷. Dr Edis answers those questions in appendix 16 and used the answers as the starting point for his analysis. In contrast Mr Wren in his proof failed to make any reference to *Conservation Area Practice*. However, he made it the centre piece of his summary and his XX of Dr Edis. The explanation? Mr Wren was, as he frankly accepted in XX, wholly unaware of the guidance when he wrote his proof. Thus

¹⁶ In which the building was the work of the borough engineer and surveyor, and the pool was sub-contracted to a specialist firm called Edmund Coignet. Architectural assistance was provided by A.L Tamkin of the borough council, but he clearly did not see Twickenham Pool as one of his major works at the time of his election to FRIBA in April 1956 because his curriculum vitae was silent on the matter.

¹⁷ Dr Edis reminds us, however, that these items are so inclusive that literally any building would fall within some of the definitions. "For example, all buildings serve as a reminder of the gradual development of the settlement in which they stand, and all will reflect former uses within the area, irrespective of their quality or interest or contribution. The crucial points to note are that (i) these are questions, not criteria, and (ii) they could (not would) provide the basis for considering that a building makes a positive contribution" (see para. 4.3.3 of Dr Edis' proof referring to the appeal decision in his appendix 17).

Mr Wren's "conversion" to the case for retention was not based on the relevant guidance, rather he has ex post facto tried to use it to support his views. In XX Mr Wren accepted that the guidance was a "useful starting point from which to begin an examination of an unlisted building within a conservation area" but not sadly his starting point¹⁸;

d. Dr Edis assessment undertakes a detailed analysis of the Twickenham Riverside conservation area so as to allow him to assess the contribution the Pool Building makes to that: see section 6. Mr Wren's proof undertakes no such analysis. The key documents underlying this assessment are:

i. the Twickenham Riverside conservation area character study¹⁹ approved by the council's planning and transport committee in March 1997 and published in November 1998 (CD 13) which identifies, inter alia, negative influences within the conservation area, and under the Twickenham Riverside sub-area states under "Problems and Pressures" that "[t]he major problem within this sub-area is the disused pool site which has blighted the western end of the embankment and is something of an anticlimax when compared to the generally high quality of the rest of the area." In XX Mr Wren tried desperately to say this was a concern about dereliction and not the expression of a view about the merits of the building. However, reading the relevant section fairly this view is not sustainable. Dr Edis' view on this is plainly the right one "[i]t is therefore apparent that this part of the conservation area contains buildings and spaces of high quality, but that the enhancement of the Riverside has been hampered by the presence of the 1930s structures associated with the pool" (para. 6.1.4);

ii. The Thames Landscape Strategy see CD 27 produced by inter alia, EH in the detailed analysis of Landscape Character Reach No.7 "Twickenham", the character of The Embankment and Twickenham waterfront is described at some length. There is specific reference to the Pool Building at p. 116, where the "derelict swimming baths building" is said to be out-of-scale with the rest of the waterfront and to introduce a "rather bleak dead-end to The Embankment". Again, and in the context of these comments about scale, even more unconvincingly Mr Wren attempted to

¹⁸ Dr Edis notes at para. 4.3.5 that "[i]t is reasonable to assume that officers of English Heritage, when giving professional advice in writing to the local planning authority on proposals for the demolition of Twickenham Pool, will have had special regard to the questions in Conservation Area Practice."

¹⁹ Produced in accordance with advisory documents by EH.

suggest that the negative comments derives from lack of use not lack of quality;

- iii. The 1991 Inspector's report: see paras. 6.2.1 – 6.2.5 of Dr Edis proof;
- e. Dr Edis concludes – see para. 6.4.1ff - that the Call-in proposals will enhance this part of the conservation area (see further below).

Conclusion on sub-issue 1

54. The Pool Building does not make a positive contribution to the character and appearance of the conservation area and should not be retained.

Sub-issue 2: If the Pool Building is determined to make no or little or no clear-cut positive contribution to the conservation area, should in any event demolition be permitted in the absence of acceptable and detailed proposals for redevelopment of the Twickenham Pool Site as a whole?

55. This sub-issue is dealt with in para. 6.11ff of Mr Freer's proof.

56. The Council submits that there is no requirement in planning terms to include the whole of the site in the short-term temporary scheme. PPG15 requires in relation to buildings that make no positive contribution that consent should not be given "unless there are acceptable and detailed plans for any redevelopment" (para. 4.27, emphasis added). The Council's current proposals already bring forward a number of benefits without the remainder of the site being included. Dr Edis analysis in para 6.4.1 ff of his proof is also relevant in this context. The test in para. 4.27 of PPG15 must be applied to the Call-in proposals themselves without considering what might come forward in the long term.

57. The Call-in proposals take in the most prominent part of the site as a whole fronting onto The Embankment, the River Thames and Wharf Lane. The remainder of the site would be screened by the proposals on the front part of the site. This maximises the environmental benefit such that, in terms of any improvement to the character and appearance of the area, the inclusion of the remainder of the site would have only limited additional benefit: see in this regard the evidence of Mr Freer at para. 6.13 and Dr Edis at para. 6.4.1ff.

58. Further, should for any reason the longer-term redevelopment of the site be delayed, the benefits derived from the Call-in proposals would still remain. In addition to the negative visual impact of the existing buildings, the site currently makes no contribution to the amenities of the area in terms of community use. The Council's evidence on the commercial viability of retaining the existing pool building in a beneficial use (appended

to Mr McKevitt's Proof – see below) concludes that the retention of the Pool Building is not financially viable. Consequently, if retained on site, the Pool Building will continue to make no positive contribution to the community. Even if the longer-term redevelopment of the site is delayed to a greater or lesser degree, it is preferable in both visual and community terms to bring forward and realise the benefits derived from the Council's short-term proposals. Indeed, as explained elsewhere any potential delay in securing the comprehensive redevelopment of the site would make it all the more important that an interim use of the site is brought forward at this time.

59. In summary the Council concludes that there is no reason why demolition should not be permitted notwithstanding the absence of acceptable and detailed proposals for redevelopment of the Twickenham Pool Site as a whole.

60. Furthermore, if the Inspector/FSS agree that the Pool Building does not make a positive contribution to the character and appearance of the conservation area the only issue is as Dr Edis explained whether the Council's Call-in proposals are acceptable. Does the short term scheme preserve or enhance the character and appearance of the conservation area?

61. The Council submits that it does:

62. For the detail of the scheme reference is made to the proof of Mr Fearon Brown and the digital photographs he produced and explained.

63. Dr Edis in para. 6.4 sets out his conclusions on enhancement. In particular he makes the points that (i) the use of the land will be consistent with the recreational and leisure uses since the 1920s, and, significantly, will offer better and greater public use of the site than at any time since 1980; and (ii) the demolition of the Pool Building and its replacement by landscaping along the river frontage will, in itself, visually enhance the appearance of this part of the conservation area. It certainly will not result in an "ugly gap" in the conservation area: see para. 4.29 of PPG15.

64. The Council's case is that once it is accepted that the Pool Building makes no positive contribution to the conservation area it can only be concluded that the Call-in proposals meet the test of preserving or enhancing. TRTG and TSG raised questions on the quality of design, but despite XX, it is still unclear what the problem was. It is not an ideal scheme, but that is not the test. The test is "does it cause harm", and the Council says it does not.

Sub-issue 3: If it is determined that the Pool Building does make a clear-cut positive contribution, have the Council satisfied the “broad criteria” in paras. 3.16-3.19 of PPG15 relating to (i) the condition of the Pool Building, (ii) the adequacy of efforts to keep it in use, and (iii) the merits of alternative proposals for the Application Site?

65. I would reiterate the Council do not consider that these “broad criteria” apply.
66. The overwhelming balance of professional opinion, see above, is that the Pool Building does not make a positive contribution to the character or appearance of the conservation area. Therefore, the only remaining consideration under paragraph 4.27 of PPG15 should be whether there are detailed and acceptable proposals for its redevelopment. The Council submits that the Call-in proposals are both detailed and acceptable. The inspector is requested to take this course, but for the sake of completeness the following submissions are relevant to any consideration of the site under the broad criteria set out in paragraphs 3.16 - 3.19 of PPG15 (as mentioned in paragraph 4.27 of PPG15).
67. **The Condition of the Pool Building:** see the condition report in McKevitt Appendix 3. This is agreed in the Statement of Common Ground by all the r. 6 parties. Overall, the Twickenham Pool Site is in an exceptionally poor condition. Further, although the Pool building proposed appears to be fundamentally structurally stable the roofs, services and interior finishes of the main building all require replacement and there are doubts as to the feasibility of retaining various items of cladding to the Embankment elevation of the property. Further, extensive unplanned tree growth has caused a weakening of retaining walls at the perimeter and damage to drainage and service.
68. **The adequacy of efforts to keep it in use:** this aspect of the Council’s case is considered in the evidence of Mr McKevitt at section 7 and Dr Edis at section 5.
69. There are a number of points if this stage of the analysis is reached:
- a. on returning the pool to its original use:
 - i. there is no statutory or regulatory requirement to provide additional swimming facilities within the Twickenham area;
 - ii. the 1991 Inspector (at section 4.1 at CD 10) noted there was no argument for returning the pool to its original use and that “he saw little prospect of it happening”;
 - iii. Dearle & Henderson commissioned a specialist consultancy firm (Splash International Limited) to consider the likely cost of reinstating a

swimming pool. The report from Splash International is in Mr McKeivitt's Appendix 3. Splash International concluded that due to the level of dilapidation, the most cost effective approach to reinstatement would be to install a new pool and associated plant. Splash International cost this at approximately £400,000. However, this cost estimate would address only those works essential to reinstate the pool itself and no other facilities. Dearle & Henderson undertook more detailed costings to establish the level of additional expenditure likely to be required to reinstate the buildings and the remaining site to their original uses. This identifies a total requirement of £2,580,000 (see annexe 1 to appendix 4 of Mr McKeivitt's evidence);

- b. on the potential for reinstatement and alternative use of the Pool Building²⁰:
 - i. Donaldsons report (McKeivitt Appendix 4) appraises the feasibility and commercial viability of reinstatement of the Pool Building and development for alternative commercial uses at the former Twickenham Pool Site (retaining the Pool Building);
 - ii. the report uses cost evidence provided by Mr Joyce of Dearle & Henderson (at annexe 1 to Appendix 4 of Mr McKeivitt's evidence). The reports are addressed to:
 - 1. assessing the current construction costs for reinstating the Swimming Pool Complex and compliance with current Building (and other applicable) Regulations (see above);
 - 2. assessing the current construction costs for converting the Pool Building into retail space at Embankment level and restaurant or residential use with car parking and soft landscaping on the remainder of the Council owned land. Financial development appraisals to assess the feasibility and commercial viability of these proposals are provided at annexe 2 to Appendix 4 of Mr McKeivitt's evidence;
 - 3. assessing the current construction costs for converting the Pool Building into retail space at embankment level and restaurant use at first floor (terrace) level with new residential units on the

²⁰

As Mr McKeivitt explains in para. 7.14 of his evidence "[t]he Council is not seeking to put the existing pool building (or other parts of the former pool site) to the alternative uses described above. The appraisals have been conducted solely to demonstrate in the context of the tests at section 3.16 to 3.19 of PPG15 (if they are applicable at all, which they are not, see the evidence of Dr Edis), that the feasibility or viability of such uses is so low that these add further weight to the argument for the demolition of the pool building".

remainder of the Council owned land. Financial development appraisals to assess the feasibility and commercial viability of these proposals are provided at annexe 2 to Appendix 4 of Mr McKevitt's evidence;

- iii. on the basis of the financial development appraisals applying to each of these scenarios, Donaldsons conclude that none would be financially viable;
- iv. it is also relevant in this regard that a number of developers have over the last 20 years either expressed interest in or been involved in schemes for the redevelopment of the Twickenham Pool Site: i.e. Dawnay Day, Marks & Spencer, Mecca, Alsop/Zogolovitch/First Premise, St George etc (see further the 10 December 2002 Cabinet report (CD19) at para. 4.7.3). Not one of these developers has ever expressed an interest in retaining the Pool Building as Mr McKevitt explained in RX;
- v. Donaldsons conclude "Retention of the Pool Building would represent a very serious constraint on the future development potential of the site" (see para. 4.3). The point is also made (see para. 4.1) that "... the potential for alternative commercial uses for the existing building is limited by the size of the building, its construction, its susceptibility to flooding and its layout. The location of the Pool Building within the overall Pool site also significantly constrains the potential for additional development on the site". Mr McKevitt elaborated on this matter in XX by Mr Wren and in RX;
- vi. Mr Wren, in closing, suggested that the Council had offended paragraph 3.19(ii) of PPG15 as the unrestricted freehold has not been offered on the open market. The Council responds as follows:
 - 1. This would require the Council to seek offers for the freehold from a private developer – which nobody (apart from Mr Wren) wants
 - 2. This is not a case involving privately owned land. The land is owned by the Council. The Cabinet decided in December 2002 not to dispose of the freehold but to pursue the short-term scheme and the other elements of its strategy.
 - 3. Notwithstanding the total absence of developer interest in acquiring the site with a retained pool building, the advice from Donaldsons to the Council is that its retention would represent a

very serious constraint on the future development potential of the site.

- c. the only other detailed alternative proposal that has been put to the Council was that submitted by TRTG for consideration at the December 2002 Cabinet meeting. However, that can be excluded from consideration here not just because it is not viable but because in reality it does not retain sufficient of the Pool Building to make it relevant to an assessment of the broad criteria in paras. 3.16 – 3.19 of PPG15;
- d. Mr Wren realises that even if he persuades the FSS of his case on the historical and architectural merits of the Pool Building this will not “get him home” in PPG15 terms (because then the broad criteria in paras. 3.16 - 3.19 come into play). Accordingly, he did what he could to demonstrate that the re-use of the Pool Building is viable:
 - i. first, he produced his own scheme (see Appendix A12.7 to Mr Wren’s proof). This scheme requires third party land owned by Dawnay Day. Mr McKevitt in his EC outlined a number of difficulties with this wholly outline scheme, including that:
 - 1. it fundamentally misunderstands the concept of enabling development – Mr McKevitt put it this way it is like asking your neighbour to knock down his house, build a block of flats in its place and then give you the money to improve your house;
 - 2. it mirrors closely a scheme put before the UDP Inspector in trying to persuade him not to alter the T1 site boundary to exclude King Street. He concluded “Given the apparently stable and successful nature of the business on the south side of King Street, the heart of Twickenham’s hopping centre, I am inclined to agree with the LPA that there is no justifiable reason to widen the boundary of the Proposal area as that would be likely to render its implementation excessively costly to the point of not being viable”;
 - 3. it ignores the high opportunity costs for Dawnay Day of removing value generating activities from its land - since Dawnay Day acquired its properties on King Street, its premium retail rents will have increased greatly as Mr McKevitt explained in his EC. Over a period of 5 years and with this increase of income, King Street will be generating a very healthy return on the original investment;

4. there is no incentive whatsoever for Dawnay Day to pursue the approach by Mr Wren. It would create a hole in the balance sheet, remove profitable cashflows and reduce shareholder value dramatically;
 5. Dawnay Day is a private landowner and not a philanthropic organisation. Part of its work as a developer will involve contributions to the public realm – but not at the expense of abandoning all commercial logic;
- ii. Secondly, Mr Wren produced letters from and eventually called Mr Sarhage. It is submitted that little or no real weight can be attached to this evidence. Mr Sarhage has no experience of development in the UK. He has no understanding of conservation law and practice (he wanted to put an extension on the top of the Pool Building and we never learned from Mr Wren how this would affect the classical symmetry he sees in the building!). Mr Sarhage, has no details for any scheme beyond what is sketched out in the barest detail in his letter. On the one hand he tells us he is not “primarily” interested in money on the other he invites the Council to transfer the Twickenham Pool Site to him at zero value in order that he can make a 17% plus profit! Mr Sarhage had never heard of s. 123 of the Local Government Act 1972 and had not considered how this might impact on his plans.

70. **The merits of alternative proposals for the Application Site:** this part of the broad criteria requires regard to be had to the merits of the proposals put forward to replace a building considered to make a clear contribution to the character and appearance of the conservation area. This has been considered above in relation to sub-issue 2.

71. In summary, it is submitted that even if it is relevant to look at paras. 3.16 – 3.19 of PPG15 (and it is submitted that it is not) then applying these broad criteria still points to the demolition of the Pool Building rather than its retention.

Conclusions on the second issue

72. It is submitted that the Call-in proposals are fully compliant with PPG15. The Pool Building does not make a positive contribution to the character and appearance of the conservation area. The Call-in proposals would preserve or enhance the character or appearance of the conservation area. Further, nothing in PPG15 means that demolition

cannot or should not be permitted in the absence of acceptable and detailed proposals for redevelopment of the entirety of the Twickenham Pool Site.

(iii) The relationship of the proposed development to policies in the AUDP and those in the FRUDP

73. This matter is covered in detail in the evidence of Mr Freer. The Council's case is that the Call-in proposals are fully in accordance with:

- a. the relevant policies in relation to the control of development within conservation areas;
- b. the relevant policies encouraging the provision and use of public open space;
- c. the relevant policy approach towards development close to the River Thames;
- d. the relevant policies relating to environmental improvements;
- e. the T1 Proposal, both in the adopted AUDP and the FRUDP.

Policies relating to the control of development within conservation areas

74. The relevant policy in the AUDP is Policy ENV10 "Protection & Enhancement of Conservation Areas". This policy seeks to preserve or enhance the character and appearance of conservation areas having regard to a number of criteria set out in the policy itself. These criteria include (A) retaining buildings, or parts of buildings, and trees or other features important to the character or appearance of the area; (B) allowing development (including redevelopment) where this would preserve or enhance the character or appearance of the conservation area, and; (E) not granting conservation area consent for demolition or partial demolition which would be detrimental to the character of the area unless detailed proposals for an acceptable replacement have been approved²¹.

75. In the light of the submissions made above in relation to PPG15 and the second issue the FSS asked to be informed about it is submitted that the Pool Building does not make a positive contribution to the character or appearance of the conservation area its demolition would not be detrimental to the area and that the Call-in proposals will preserve or enhance the character and appearance of the conservation area²².

Policies relating to the quality and provision of open space

76. These are considered in paras. 6.25ff of Mr Freer's evidence.

²¹ The issues arising under Criteria (E) mirror those considered above in the context of PPG15. In short the Council's submission is that the Call-in proposals themselves even in the absence of any long term scheme constitute an acceptable replacement for the existing building

²² The equivalent policy in the FRUDP (Policy BLT2) is almost identical to Policy ENV10. The Call-in proposals are, therefore, also fully in compliance with Policy BLT2 of the FRUDP.

77. The Call-in proposals provide for public use and public open space. The Twickenham Pool Site at present provides none. Furthermore, this will enhance The Embankment which is an existing and important area of open space close to Twickenham town centre which benefits from its riverside setting. Accordingly there is compliance with Policy ENV5 of the AUDP and Policy ENV11 of the AUDP²³.

Policies relating to the River Thames and the riverside

78. In the AUDP Policies RIV1, RIV3, RIV4 and RIV8 are most relevant to the Call-in proposals. These policies are considered by Mr Freer at para. 6.29 ff of his proof. In summary Mr Freer's evidence (which has been substantially unchallenged) is that the Call-in proposals are in compliance with:

- a. Policy RIV1 in that they improve the environment and character of the river and the propose uses which are appropriate to a riverside location²⁴;
- b. Policy RIV3, in that they increase public access to the riverside²⁵;
- c. Policy RIV4, in that they encourage the recreational use of the River Thames and the riverside by both providing new facilities and extensions to existing ones. The Call-in proposals fall into both categories, in that they would be a new (albeit temporary) facility and an extension to the existing open space on The Embankment²⁶;
- d. Policy RIV8, in that the use of the Application Site for open space is clearly related in function to the river as an extension to its recreational use and value. The extension and improvement of facilities in this location would increase public enjoyment of this part of the riverside, not least because the Twickenham Pool Site has no beneficial use at present.

Policies relating to environmental improvements

79. Mr Freer in his proof of evidence at para. 6.39ff demonstrates why the Call-in proposals are in accordance with a number of other relevant policies such as:

²³ The Policy is in two parts. The first part of the policy (Part A) was included to reflect the advice in RPG3 and seeks to resist the loss of existing areas of open space. It also seeks to increase the enjoyment of public open space by improving public access and facilities for all residents. The Call-in proposals accord with this part of the new policy. The second part of the policy (Part B) reproduces exactly the wording of Policy ENV5 of the AUDP, see above.

²⁴ There is no direct equivalent of Policy RIV1 in the FRUDP, the requirement to protect the character of the river now falling in the broader remit of Policy ENV26 in the FRUDP.

²⁵ The equivalent policy in the FRUDP is Policy ENV27.

²⁶ The equivalent Policy in the First Review is Policy ENV28.

- a. Policy ENV1 of the AUDP “Areas of Special Character” and Policy ENV26 of the FRUDP;
- b. Policy ENV33 of the AUDP “Environmental improvements” and the equivalent Policy BLT26 in the FRUDP;
- c. Policy ENV20 of the AUDP “Accessible environment” as well as the equivalent Policy BLT12 in the FRUDP.

Compliance with Proposal T1

80. Mr Freer at para 6.45ff of his proof of evidence explains that the T1 Proposal, both in the AUDP and the FRUDP, envisages the comprehensive redevelopment of the Twickenham Pool Site but that nonetheless, the Council’s short-term proposals accord with some of the main objectives set out in T1 for the following reasons:

- a. the justification for Proposal T1 indicates that emphasis must be directed towards the river and, by concentrating on the frontage of the site as a whole, and the Call-in proposals clearly accord with this fundamental requirement. The only objective of the Call-in proposal is to provide leisure activities for the community. Whilst the range of facilities provided by the short-term proposals is by necessity limited to a children’s play area and seating, these facilities nevertheless accord with the objective of Proposal T1 by bringing the site into beneficial community use;
- b. the other prime objective of Proposal T1 is to provide increased opportunities to enjoy the riverside. By providing additional facilities close to the river and a “destination” at an otherwise “rather bleak dead-end to The Embankment” (see Thames Landscape Strategy at CD 27), the Call-in proposals do provide increased opportunities to enjoy the river.

81. Furthermore the most important aspect of Modification D/T1/2 was to introduce expressly into T1 the possibility of a scheme of temporary uses for the Twickenham Pool site. The UDP Inspector has recently recommended that T1 be so modified. The Council welcomes this recommendation – it is wholly supportive of this application.

Regional policies

82. In addition to local planning policies, the Call-in proposals subject to this Inquiry accord fully with both regional and national planning policy, as is demonstrated by the evidence of Mr Freer in para. 6.48 ff. In his EC (and in XX by Mr Wren) Mr Freer explained why in his view the Council’s proposals accorded with the newly adopted London Plan.

Conclusions on the third issue

83. The Call-in proposals are fully in accordance with the relevant Development Plan and emerging Development Plan policies as well as regional policy.

The cases of the r. 6 parties

84. Before concluding it is necessary in outline to map out what the objections and reservations of the r. 6 parties to the Call-in proposals are. This serves several purposes. First, it will allow consideration to be given to how these objections/ reservations fit into the issues upon which the FSS has asked to be informed. Secondly, it provides an overview of the case being put against the Council and which, it is submitted, it has met.

Mr Wren

85. Mr Wren's case has been dealt with above in the course of dealing with the issues upon which the FSS asked to be informed.

TRTG

86. **Who are TRTG?** TRTG's case sought to emphasise their "credentials" (see section 1 of Mr Stearman's proof) and "mandate" (Appendix P to that proof). Plainly this was a sensitive issue for TRTG. The evidence is as follows:

- a. TRTG is as Mr Perry, in his EC, helpfully told us an "ad hoc group". A small caucus of persons who appear to somewhat loosely form a committee which drives it;
- b. It was formed as recently as 2001 (Mr Stearman was unable to assist on this matter but Mr Chappell confirmed this to be so in his EC);
- c. It has no membership as such as opposed to a database of 480 names to whom information is sent, see Mr Wren and Mr Stearman's evidence;
- d. It is a splinter group which until relatively recently came under the TSG umbrella. TRTG parted company with TSG on whether the Call-in proposals should be supported, although we know that initially TRTG in the form of its "chairman" Mr Reekie supported the Call-in proposals: see CD 21 the February 2003 Report at p. 3, para. 3.22 and Mr Reekie's letter upon which this comment is based at p. 8 of the XX Bundle (inquiry document 5). How TRTG came to change its view from one of broad support to one of outright opposition was not in any way adequately explained in TRTG's evidence to the inquiry;
- e. Mr Stearman accepted in XX that in terms of "mandate" the group with the strongest mandate was TSG which represented all of the relevant Twickenham amenity groups and residents associations, had memberships far in excess of

TRTG's and which had led opposition to previous schemes proposed on the Twickenham Pool Site. As TSG said in opening they represent a broad range of views in the Twickenham area as a whole and not just in the area of the Application Site;

- f. TRTG appear to have two main aims according to Appendix P to Mr Stearman's proof (i) to oppose "too much" (as Stearman clarified in XX) commercial development of the Twickenham Pool Site and (ii) to work towards the "retention" of the Twickenham Pool Site for public use;
- g. TRTG made no "corporate" objection to the Council objecting to its proposals. However, some individual TRTG members wrote letters of objection. However, there were in total only 14 objections received by the Council to its proposals at the time it considered the applications (a tiny fraction of even the 480 people on the TRTG mailing list, never mind the population of Twickenham): see the officer report on the Call-in proposals at CD3 pp. 27 and 33;
- h. In considering any "mandate" TRTG claim to have one must take into account that whereas the Council is elected several TRTG members (including Mr Stearman) stood at the last election and lost;
- i. Finally, TRTG seek to rely on the fact that it has had the benefit of access to various professional advisers in the fields of building, finance, accountancy and ecology (see e.g. Mr Stearman's proof at section 1). However, these persons still remain anonymous and were not prepared to put themselves forward and be XXd.

87. **TRTG's objections - general:** it is fair to say that at least in writing TRTG (see the proofs, supplementary proofs and "summaries" of Messrs Stearman and Chappell and the proof of Mr Perry) purported to take quite literally every conceivable point against the Call-in proposals. It is proposed to list each of TRTG's objections and consider briefly whether in the light of the XX of the TRTG witnesses any of those objections are left standing.

88. However, before doing so it must be noted that TRTG's position is not entirely easy to understand. Much of the evidence presented even within the same proofs was internally contradictory. As between the various proofs and other written evidence of TRTG's 3 witnesses the contradictions were even more marked. In short the Council submits that TRTG put forward a wholly unconvincing case for refusal of consents at the inquiry. A case which simply did not stand up to any scrutiny under XX.

89. From section 2 of Mr Stearman’s proof it is plain that the “principles” underlying TRTG’s objections are: (i) that there should be “significant open space” provided on the Twickenham Pool Site, (ii) that TRTG recognise in principle the appropriateness of “interim” (or temporary) schemes on the Twickenham Pool Site, and (iii) that the retention of the Pool Building in their own scheme is merely “a means to an end” namely the provision of open space. In the light of those principles quite why TRTG are objecting to rather than supporting the Call-in proposals becomes all the more difficult to understand. As Mr Stearman accepted in XX:

- a. the idea of a temporary scheme originated with TRTG: see the 10 December 2002 (CD19) Cabinet report at para 4.23.1. Thus TRTG are not opposed in principle to a temporary scheme. Accordingly, whatever TRTG’s objection is to the Call-in proposals it is not that it is intended as a temporary scheme only;
- b. presently the Twickenham Pool Site provides no open space or public use whatever. It has not done so now since 1980. In contrast the Call-in proposals will allow part of the Twickenham Pool Site to be used by the public and as open space. It will provide some public benefit in contrast to the present position;
- c. TRTG categorically do not, despite their written evidence, support the retention of the Pool Buildings²⁷. Briefly in their supplementary proofs Messrs Stearman and Chappell flirted with this as a ground for objection (in contrast Mr Perry berated the Council for not being brave enough to just go ahead and demolish the Pool Building without planning permission and he even obtained a quote for the Council for the cost of demolition). However, in XX both Messrs Stearman and Chappell readily acknowledged how inconsistent an objection based on retention of the Pool Building was with their continuing belief that the TRTG scheme should be implemented in some form. Mr Chappell’s position was particularly untenable²⁸. He was urging DCMS to list the Pool Buildings while at the same time advocating the implementation of the TRTG scheme (and indeed complaining to the Ombudsman about the Council’s alleged failure to consider the TRTG scheme) – a scheme which as Mr Stearman memorably said involved “taking off the first floor of the Pool Building, re-cladding the ground floor and knocking several holes in it”!: see further the XX bundle (inquiry document 5) at pp. 19 – 20, 21 – 29 and also Mr Wren’s appendices at pp. 26 – 28. Mr Chappell offered no rational explanation for his inconsistent position in XX or in IQ. He

²⁷ TRTG, prior to its separation from TSG, was a signatory to “Rethink on the Riverside”, CD 19 Appendix N1- N3. This clearly supported the principle of demolition of the Pool Building.

²⁸ On day 5 following TRTG having by that time long abandoned any retention case Mr Chappell began trying to XX Mr Freer on issues relating to the retention of the building, before withdrawing that in the face of my objection!

said in answer to an IQ that he understood listing would have effectively blocked the TRTG scheme. If one accepts this then the only explanation of Mr Chappell's behaviour is the one I put to him in XX namely that he will say or do anything to try and block the Call-in proposals even if this is fundamentally inconsistent with his or TRTG's beliefs.

90. Indeed, it is the Council's case that what underlies TRTG's objection is not any "principle" but simply the fact that TRTG is annoyed (to put in mildly) that the Council chose to pursue its own short-term scheme and not the TRTG scheme. This is the only consistent theme one can detect in TRTG's position.

91. **TRTG's objection – specific:** The following are a comprehensive list of TRTG's objections and a brief indication of what is left of such objection at the end of the inquiry process:

- a. **General design, materials, layout and height of the Call-in proposals:** this objection (see e.g. Mr Stearman's proof section 3, para. 1(i) a. p. 3) was based on a miscellaneous collection of design objections relating principally to fencing, landscaping, seating arrangements etc. Under XX TRTG abandoned all of these points accepting that such matters are to be the subject of proposed conditions requiring approval of details before commencement²⁹;
- b. **The majority of the site will be left unimproved:** (see e.g. Mr Stearman's proof section 3, para. 1(i) b. p. 5). This objection dissolved under XX of Mr Stearman. It is clear that at various times TRTG have advocated upon the Council implementation of part of the TRTG scheme covering an area that coincides exactly with the Application Site and which leaves the remainder of the Twickenham Pool Site "unimproved": see CD19, the 10 December 2002 Cabinet Report at paras. 4.23.18, 4.23.19 and 4.23.20 bullet point 6, Appendix O to that report at p. O14 and Mr Wren's appendices document A1.2, p.16 para 11. The Council has borrowed the idea of developing part of the Twickenham Pool Site for a short terms scheme from TRTG. In the light of that its objection is difficult to comprehend. Mr Stearman undeterred attempted to justify the unjustifiable. He

²⁹ In any event TRTG's objections under this heading which focussed greatly on the presence of mesh fencing were somewhat disarmed when Mr Stearman was reminded that the TRTG involved mesh fencing: see CD19 p. O25 showing that zone A was proposed to be fenced at the boundary with timber posts with a "mesh coat" and p. O53 showing "reclaimed timer fence with mesh". Mr Stearman the accepted (as he had to) that he did not object to the principle of the use of such fencing. Mr Stearman's point on analysis was never an in principle objection. Mr Wren raises the same issues – yet he also promoted the same TRTG scheme to the Council with such fencing.

made 2 points: (i) under the TRTG part implementation although the majority of the Twickenham Pool Site would remain unimproved there would be viewing platforms in the developed part allowing visitors to observe the flora and fauna on the undeveloped part of the site whereas under the Call-in proposals views of the remainder of the site would be blocked off. TRTG have euphemistically called this an educational opportunity in the form of “a biodiversity garden”; and (ii) that even part implementation of the TRTG scheme would have one benefit that the Call-in proposals would not namely “the potential for flexible uses to accommodate charities, arts, community groups etc.”. However:

- i. as regards the proposed TRTG viewing platforms into the remainder of the site: the unimproved remainder of the site is not on any view visually attractive and hence the Call-in proposals in blocking off views is preferable. For a more objective approach to the biodiversity value of the remainder of the site than that advocated by TRTG see the UDP Inspector’s report at para 11.9 and the environmental audit submitted with the Council’s planning application in CD2 tab 3 (e.g. p. 5, there is nothing at all remarkable about the site in ecological terms). In any event Mr Stearman accepted in XX that the failure of the Call-in proposals to provide such a facility were it to be adjudged to be of value could not possibly amount to demonstrable harm to interests of acknowledged importance such as to amount to a ground for refusing planning permission;
- ii. as regards the possible accommodation of community groups etc: on this matter there are 2 points in response:
 1. first, on the part of the Twickenham Pool Site left undeveloped there already is and will continue to be during the life of the Call-in proposals be use of some of the other buildings by a community group namely HANDS (see their letter submitted to the inquiry – their concern is as to their position in any long term scheme of redevelopment not in the context of the Call-in proposals. Mr McKeivitt answered further questions on this in XX);
 2. secondly, Mr Stearman accepted in XX that even if the Call-in proposals failed to provide such a facility this could not possibly amount to demonstrable harm to interests of acknowledged

importance such as to amount to a ground for refusing planning permission³⁰.

So on analysis whatever objection TRTG have to the Call-in proposals it cannot be that the temporary scheme encompasses only part of the Site as TRTG have in the past urged a similar phased and partial approach to their scheme;

- c. **Continued blight:** (see e.g. Mr Stearman’s proof section 3, para. 1 (i) c. p. 5). Mr Stearman accepted in XX that as regards blight that was what currently afflicted the Twickenham Pool Site and had done so for many years and that the Call-in proposals could only reduce rather than make worse the blight;
- d. **The Twickenham Pool Site should be considered together with the rear of King Street in planning terms:** (see e.g. Mr Stearman’s proof section 3, para. 1(i) c. p. 5). The UDP Inspector in his report at para 11.4 rejected this approach. It is, as Mr Stearman accepted in XX, beyond the remit of this inquiry to revisit that issue³¹. (Mr Wren’s case on the possibility of the rear of King Street providing “enabling development” for the Twickenham Pool Site is considered in detail above);
- e. **Breach of PPG15:** see section 3, para. 1(ii), p. 6 of Mr Stearman’s proof. A number of purported objections are raised under this head:
 - i. **Not part of defined long term plan:** as explained above this objection was based on a misreading of PPG15 which requires acceptable and detailed plans for any redevelopment and does not require “long term plans”. Regrettably none of the TRTG witnesses under XX were able to say that they had read PPG15. The absence of long term plans as a more general point outwith PPG15 is considered further below;
 - ii. **Proposed changes to the UDP reduce public expectations:** this was as Mr Stearman accepted in XX beyond the remit of this inquiry;
 - iii. **Sustainability:** Mr Stearman after attempting an initial defence of this line accepted that in the light of TRTG not pursuing any case based on the architectural and historical merits of the Pool Building it could not by definition say it made a positive contribution to the conservation area and accordingly any part of TRTG’s case relying on para. 3.19 of PPG15 fell away;

³⁰ It is of note that of the 7 points listed in CD19, the 10 December 2002 Cabinet Report para. 4.23.20, as being benefits of the TRTG scheme in TRTG’s view the Call-in proposals even on Mr Stearman’s case meet at least 6 of these.

³¹ The irony of TRTG, which was in the very recent past (i) bitterly opposed to the Dawnay Day scheme and (ii) highly critical of the Council for proposing to enter into a deal with Dawnay Day, now encouraging the Council to go back to Dawnay Day is not lost on the Council.

- iv. **Piecemeal planning solution:** this has been dealt with above and merely repeats the flawed “long term” objection of TRTG. Also this has been considered above. The phrase “piecemeal planning solution” might well be considered pejorative given that when a similar approach was being urged on the Council in the context of TRTG scheme the wording used was phased or incremental and TRTG were holding this up as a benefit of their scheme.
- f. **Relationship with the AUDP and FRUDP:** see section 3, para. 1 (iii) p. see section 3, para. 1(ii) p.7 of Mr Stearman’s proof. These issues are considered at length above in relation to the third issue the FSS asked to be informed about. However, in relation to the specific points raised:
 - i. **River-related uses:** Mr Stearman accepted in XX that the Call-in proposals in providing a playground and public open space close to the river were likely to increase the use of river in the area of the Application Site when compared to the present. Mr Stearman seemed (on paper at least) sceptical about whether a playground encouraged river related uses but in October 2001 TRTG in its Project mission statement see pp. 30 – 34 of the XX bundle (Inquiry Document 5) was putting forward a playground as part of a package of proposals to encourage river related uses;
 - ii. **Public history of the site:** in XX it emerged that this was an objection not about the Call-in proposals but about any long-term plans for the Twickenham Pool site an issue which save to the extent considered above is beyond the remit of this inquiry. The suggestion by Mr Stearman that “[t]he Call-in proposals to develop the site without sufficient public benefit are contrary to this history and precedent” cannot as Mr Stearman accepted in XX be applied to the Call-in proposals before this inquiry given that it is a scheme which provides nothing but public benefits;
 - iii. **UDP changes:** again Mr Stearman rightly accepted this to be beyond the scope of this inquiry;
- g. **Regional and National Policies:** (see section 4, p. 7 of Mr Stearman’s proof). Mr Stearman on paper alleged breaches of various regional policies including what was then the draft London Plan. In XX he could point to no policy which he said was breached. So far as they are relevant regional and national polices are

considered above in the context of the second and third issues the FSS has asked to be informed upon³²;

- h. **Additional disputes:** (see section 5, p. 7-8 of Mr Stearman’s proof):
 - i. **Failed to make proper plans:** this again turned on the FRUDP process and again Mr Stearman rightly accepted this to be beyond the scope of this inquiry;
 - ii. **Failure to determine the TRTG planning application of 6 December 2002:** this is plainly beyond the remit of this inquiry;
 - iii. **Ignored the results of public consultation:** with respect TRTG as Mr Chappell’s complaint to the ombudsman illustrates seem unable to distinguish between: (i) ignoring an expressed view; and (ii) taking it into account but not accepting it. Mr McKeivitt dealt with this theme in his EC;
 - iv. **The Council’s failure to maintain and improve the Riverside:** to the extent that this is relevant at all to the issues before this inquiry Mr Stearman accepted in XX that the Call-in proposals are an attempt to maintain and improve part (and the Council say the most prominent part) of the Twickenham Pool Site;
 - v. **Mobility issues:** it was suggested that the Call-in proposals “lacks mobility access between levels”. However, Mr Stearman accepted that there was no part of the scheme inaccessible to the disabled. Mr Fearon Brown explained this further in his EC.
- i. **The retaining wall issues:** these were raised principally in Mr Chappell’s evidence:
 - i. **Technical:** in XX Mr Chappell accepted that this was dealt with by a proposed condition and he was not saying that this matter could not be dealt with;
 - ii. **Visual:** Mr Chappell then suggested that the retaining wall as proposed to be kept in the Call-in proposals (with buttressing) would have an adverse effect on the visual appearance of the scheme. In XX it became clear that Mr Chappell had failed to spot that the buttressing was shown on the Council’s digital photographs of the scheme. Mr Fearon Brown in his EC produced enhanced digital photographs (inquiry document 13) and

³² In his “summary” Mr Stearman sought to rely on other national policies including PPG1 and PPG12 however these points related to his view that the Council should adopt a planning brief pursuant to T1 before considering any short-term scheme – this is considered above.

explained the design related issues. The Council submits that there is no sustainable visual appearance objection in this regard;

- iii. **Other:** Mr Fearon Brown in XX made clear his view that seating can be provided notwithstanding the buttressing. In any event both matters are to be the subject of detailed approval.
- j. **The condition of the Pool Buildings:** this is now agreed between the Council and all the r. 6 parties – see the statement of common ground³³;
- k. **The absence of any long-term proposals (generally and not specifically with regard to PPG15):** this was described in Mr Stearman’s supplementary proof as “[a] fundamental point of the TRTG case”. TRTG’s case appears to be that before even any short term scheme goes forward the Council should “tell the public of their intentions” for the long term by inter alia adopting a new Planning brief for the whole of the Twickenham Pool Site: see paras. 2 – 5 and 17 – 18 of Mr Stearman’s summary. There are a number of points that are relevant in this context:
 - i. First, as noted above in principle TRTG consider a short term scheme to be acceptable;
 - ii. Secondly, the Council’s approach is two–stage. The Call-in proposals are intended to bring at least part of the Twickenham Pool Site back into public use albeit in the short term – that is stage one. It is precisely because at present the Council has not determined what it intends for the site in the long term and because the process of determining that scheme and then delivering it will take time that the temporary scheme is being proposed.;
 - iii. Thirdly, part of the process of the making of long term plans involves completing the process of the modification of the UDP and then adopting a planning brief for the site in accordance with T1 as eventually amended. These processes inevitable take time. The UDP modification process is a statutory process and cannot be overridden in the interest of speed even if this were considered desirable. As regards a planning brief the Council has made plain that it *will* in due course adopt a new planning brief;

³³

In XX it emerged that TRTG had determined in December 2003 to “demonstrate with a Condition Report in support on Renovation Conservation and sustainability that there were valid alternative schemes that could have been implemented”: see CD 8 p. 2 (d). This is all well and good save that the r. 6 statement in fact predated Mr Chappell’s condition report and indeed his visit to the site upon which it was based both of which happened in January 2004.

- iv. Fourthly, part of the process adopted by the Council for finding a long term scheme is the Twickenham challenge has been widely welcomed especially by TSG which called it “a win-win approach” (see the TSG proof at p. 5)³⁴;
- v. Fifthly, it is not right to suggest that the Council have given no indication of its long term intentions:
 - 1. the minutes of the 10 December 2002 Cabinet meeting (see the last tab in CD19) record the Cabinet resolving at para. (2) that the long term scheme will “provide commercial enabling development and public open space – with land clearance and landscaping of the site paid for by enabling development”. The resolution also makes clear that the Council is determined to find a long term scheme within the fundamental parameters set by the UDP;
 - 2. furthermore the Leader of the Council in welcoming the early release of the part of the UDP inspector’s report dealing with T1 said (see Inquiry Document 12, press release dated 28 January 2004) that the Inspector “... has underscored the significance of public open space. The cabinet made a commitment in December 2002 that open space must feature in the redevelopment of this site”;

TRTG seem to want assurances and details beyond this at this stage. However, that would be to pre-judge the whole process the Council has engaged in to find a long term scheme both in the planning context (amendment of T1 and adoption of a planning brief) and in the wider context in terms of the Twickenham challenge and the production of a development brief.

- vi. Sixthly, in terms of the relationship between the Call-in proposals and any long term scheme the key issue as identified by the FSS would appear to be whether the proposed development would prejudice subsequent proposals for the redevelopment of the former Twickenham Pool Site as a whole. That issue is addressed above but simply because the Council have not as yet determined in detail what its long term plans for the site are does not mean that any such plans would be prejudiced by

³⁴

Let us not forget even Mr Reekie the “chair” of TRTG initially welcomed the Council’s two stage approach and in particular the Twickenham Challenge process: see the XX Bundle at p. 8 (Inquiry Document 5).

the scheme now being considered by this inquiry. The UDP Inspector said in para. 11.17 that “To my mind the important matter here is that nothing should be included in a short term development which would prejudice the long term solution.” The Council agrees. This application does not prejudice a long term solution, indeed it aids it. The Inspector went on “In that context it seems to me of prime importance that the planning brief should establish what part of the site should be public open space and that that should be an identical requirement whatever the timescale”. Does this mean that the Council must have its planning brief in place and its long term proposals on the table before a short term scheme can be considered? No. The whole purpose of the introduction of a short term scheme is to ensure that at least part of the Twickenham Pool site is put into beneficial use during the not inconsiderable period of time it is going to take to produce an acceptable long term scheme (a process which includes the development of a planning brief). If there could be no short term scheme until the details of the long term scheme were finalised this would defeat the whole purpose of the short term scheme.

- l. **Prejudice to the long term proposals:** Mr Stearman’s supplementary proof tried to suggest that the Call-in proposals did prejudice the long term redevelopment of the whole Twickenham Pool Site (see para. 16). However, in XX Mr Stearman having been reminded that TRTG had always indicated that its own scheme even if implemented in phases did not cause such prejudice did not maintain this objection on behalf of TRTG. The point is in any event considered further above in the context of the first issue the FSS asked to be informed about;
- m. **Absence of café, toilet etc. in the Call-in proposals:** see Mr Chappell’s proof of evidence. There are two points:
 - i. the Council have resolved to make a separate planning application for these elements: see the Council’s 28 January 2004 press notice (Inquiry Document 12) where the Leader of the Council records “In November 2003, the Cabinet gave authority for a further planning application for these [i.e. café, public toilets and baby change facilities] which would make a huge improvement to the whole area. The timing of that application is linked to the outcome of the forthcoming inquiry into the short-term scheme”. The relevant report to Cabinet and minutes is in CD25;
 - ii. in any event the failure of the Call-in proposals to provide such facilities as part of the proposals now under consideration could not possibly

amount to demonstrable harm to interests of acknowledged importance such as to amount to a ground for refusing planning permission as Mr Chappell accepted in XX;

- n. **The pool could be economically restored and there is public demand for this.** This point is made in Mr Chappell's supplementary evidence. Mr Chappell with respect misunderstands the costs which are in the region of £2.5 million – not £400,000. Mr Chappell says there is a strong community wish to restore pool but provides no evidence of this. In any event one scheme proposed as part of the Twickenham Challenge (the Laura Sevenus Swimming School), seeks to provide aqua training for small children and a range of other general and specialist water based activities to organisations and the general public. It is specifically exploring new build facilities within the former Twickenham Pool site rather than refurbishment: see the December 2002 Cabinet Report for details in CD19;
- o. **Conditions:** not one of the conditions proposed by TRTG (see the final section of Mr Stearman's proof) amounts to a lawful condition.

TSG

- 92. TSG supports the Call-in proposals subject to certain "reservations". However, each of the TSG witnesses expressly confirmed that none of the expressed reservations are such as to cause TSG to suggest that the FSS should refuse planning permission/ conservation area consent for the Call-in proposals.
- 93. As noted above TSG consists of all the relevant local amenity and residents groups and represent a broad range of views in the Twickenham area as a whole and not just in the area of the Application Site. In one form or another, members of TSG have been involved in the public debate on Twickenham Riverside for several decades.
- 94. In terms of the likely impact of this particular scheme on future development of the Twickenham Pool Site (the first issue the FSS asked to be informed upon) TSG's case is that (see para. 1.3 of the TSG proof and the evidence of Messrs Bell and Plummer):
 - a. "the Council has developed an appropriate long term strategy";
 - b. "[i]t is unreasonable to insist, at this stage, on the production of a detailed long-term scheme. That will arise from a new brief to the developer, which can only be finalised when the outcome of the "Twickenham Challenge" is clear";
 - c. TSG welcome "any good proposals that removed some of the blight that has affected this site for nearly a quarter of a century" as the Call-in proposals do. TSG "commend" the Council for trying to find temporary uses";

- d. the Call-in proposals would in TSG's view only prejudice the future long term redevelopment of the whole of the Twickenham Pool Site if such redevelopment included the retention of all or part of the Pool Building. However, TSG take the view that "best use of the site will ultimately involve demolition of the existing buildings and sees no reason why the process of demolition should not start now";
- e. the Call-in proposals will "clearly help to improve the riverside ambiance" (Mr Plummer's evidence);
- f. "although the proposed temporary scheme is less than ideal, still, with all its flaws we prefer it to the present dereliction, and we believe that a majority of the people of Twickenham would wish it to proceed without further delay" (Mr Bell's evidence);
- g. a number of the TSG witnesses confirmed the view expressed in the TSG proof that none of the amenity groups under the TSG umbrella believe the Pool Building to be worthy of retention.

95. On the relationship between the Call-in proposals and PPG15 the second issue upon which the FSS seeks to be informed TSG again support the Council (see para. 2.3 of the TSG proof). TSG's case is that:

- a. the Call-in proposals do preserve or enhance the conservation area;
- b. do not breach relevant planning guidelines.

96. On the relationship between the Call-in proposals and the AUDP and FRUDP, the third issue the FSS asked to be informed about, TSG are again "broadly" supportive: see the evidence of Mrs Hewett updating the TSG proof in the light of the UDP Inspector's report. TSG's case is that the Call-in proposals "meet many of the conditions of the provisional UDP" and "does accord with much of the UDP" subject to certain reservations.

97. Turning now to look at the various "reservations" remembering that even on TSG's case these are not such as to cause them to suggest that the FSS should refuse planning permission/ conservation area consent for the Call-in proposals.

- a. **Lack of clarity of the long term proposals** (para. 1.1.3 of the TSG proof, 1st bullet): the reservation is that the Council's strategy which TSG welcomes (see above) is "not summarised concisely in any Cabinet paper of which we are aware". The Council notes the reservation but would again refer to the minutes of the 10 December 2002 Cabinet meeting in CD19, final tab and section 5 of Mr

McKevitt's proof (which was, of course, not available to TSG when it prepared its proof);

- b. **Compliance with the principles of the 1991 Inspector's report** (para. 1.1.3 of the TSG proof, 2nd bullet): the points made by TSG under his heading appear to relate to the Council's proposed modifications to the FRUDP which are beyond the scope of this inquiry. In any event the Council endorses the conclusion of the TSG proof that the Call-in proposals in "making temporary steps for temporary uses which do not preclude a satisfactory form of development at some future time" is fully in accordance with the 1991 Inspector's views;
- c. **Quality of design** (para. 1.1.3 of the TSG proof, 3rd bullet): as set out in the TSG proof this reservation constitutes an unfair criticism on the Council's architectural advisers which was answered in the EC of Mr Fearon-Brown and Mr McKevitt;
- d. **Long term issues** (para. 2.1.3 of the TSG proof and the evidence of Messrs Brand and Plummer): the points made by TSG under this heading relate to the location of the public open space in any *long-term* scheme involving the whole of the Twickenham Pool Site. This is beyond the scope of this inquiry to deal with;
- e. **Enhancements to the appearance of the Call-in proposals** (paras. 2.2.1 and 2.2.2 of the TSG proof and Mrs Hewett's evidence points 1 and 2): the main criticisms relate to the proposed fencing and seating and also to the non-use of the remainder of the Twickenham Pool Site. In XX (by me) Mrs Hewett accepted that all these matters were to be the subject of a condition requiring a subsequent approval of details. In XX by Mr Wren Mrs Hewett was asked if she and/or TSG had any confidence that the Council's officers would deal with this satisfactorily when the time came. There are two points:
 - i. first, Mrs Hewett's answer was that she and TSG did have confidence in the Council's officers in this regard – and that ultimately the Council's members were accountable to the electorate for its decision-making in this regard;
 - ii. secondly, as Mr Freer explained in his EC in this instance the approval of details will not be by officers but by members following a recommendation from officers;
- f. **Failure to promote active riverside use** (Mrs Hewett's evidence point 4): Mrs Hewett accepts that the Call-in proposals at least "partially promotes the use and enjoyment of the River and riverside" her concern is that "any riparian experience on the site will be purely passive" and not promote "active" riverside use and enjoyment. However, Mrs Hewett accepted in XX by me, that there were

amongst the proposals being considered as part of the Twickenham Challenge schemes involving such elements (see further above).

The overall planning balance

The benefits of the Call-in proposals

98. It is submitted that granting planning permission/conservation area consent for the Call-in proposals would have four principal benefits:

- a. First, the Call-in proposals result in the removal of a building that is almost universally accepted as not making a positive contribution to the character and appearance of the conservation area or the riverside;
- b. Secondly, it will replace that building with a carefully designed area of landscaped open space. Accordingly, the proposals bring forward environmental benefits and in particular enhance (or at the very *least*) preserve the character and appearance of the conservation area;
- c. Thirdly, the Call-in proposals bring the most prominent parts of the Twickenham Pool Site into beneficial use providing public open space and a playground on a site that has been disused for many years, and in a way that increases the enjoyment of the riverside;
- d. Fourthly, it would end years of blight and begin the step by step process of redevelopment of the whole of the Twickenham Pool Site.

99. This is a scheme which albeit temporary does nothing but provide public benefits. The Call-in proposals are in compliance with all relevant local, regional and national planning policies. Further, the Call-in proposals achieve the above benefits without prejudicing any long-term plans. Indeed by removing the Pool Building – it will assist in that regard.

The harm caused by the Call-in proposals

100. Mr Freer's view is that there is none.

The balance

101. The Call-in proposals provide a number benefits. They are in accordance with all relevant planning policies. They cause no harm.

Conclusion

102. Accordingly, the Council submit that it be recommended to the FSS that planning permission and conservation area consent be granted for the Call-in proposals.

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27/02/04