

Section 78 Town and Country Planning Act 1990

Appeal Statement of Case

On behalf of

- (1) Pelham Street Residents' Association**
- (2) Pelham Residents' Association**
- (3) The Onslow Neighbourhood Association**

**Appeals by London Underground Limited, Native Land (Kensington) Limited and TTL
South Kensington Properties Limited ("the Appellant")**

**South Kensington Underground Station; 20-48 (even) and 36-46 (odd)
Thurloe Street; 1-9 (odd) Pelham Street; 20-34 Thurloe Square ("the Site")**

Application Ref. PP/20/03216 and LB/20/03217

PINS Appeal Ref. APP/K5600/W/22/3300872 and APP/K5600/Y/22/3301446

Farrer & Co
66 Lincoln's Inn Fields
London
WC2A 3LH

INTRODUCTION

1. This Statement of Case has been prepared on behalf of:
 - a. **Pelham Street Residents' Association** (“**PSRA**”): PSRA is a residents’ association representing 16 residents across Pelham Street.
 - b. **Pelham Residents' Association** (“**PRA**”): PRA is a residents’ association representing all the 51 houses in Pelham Place and Pelham Crescent, two of which are listed Grade II and 49 of which are listed Grade II*
 - c. **The Onslow Neighbourhood Association** (“**ONA**”): ONA is a registered charity run by volunteers. ONA was founded in 1973 to protect and enhance the residential and environmental character in South Kensington; and

(together “the **Residents' Associations**”)
2. Each of the Residents’ Associations have been granted Rule 6 status. The Residents’ Associations have obtained joint representation in order to assist the Inquiry and avoid unnecessary duplication of evidence.
3. The Residents’ Associations submit this Statement of Case in response to the submission of appeals by Transport for London (“**TfL**”) against the decisions of the Royal Borough of Kensington and Chelsea (“**the Council**”) dated 13 December 2021 (“**the Decision Notices**”) to refuse planning permission and listed building consent for the following development:

“Mixed use development of the land around South Kensington Station providing for: the demolition and redevelopment of the Bullnose (including Use Classes A1, A2, A3 and B1), demolition and façade retention of the Thurloe Street Building, refurbishment of the retail facades along Thurloe Street, refurbishment of the Arcade, construction of a building along Pelham Street comprising of residential use (Use Class C3), retail use (A1, A2 and A3), and Office use (use Class B1), construction of a building along Thurloe Square to provide for Use Class C3, alterations to South Kensington Station to provide for Step-free access to the District and Circle Lines and fire escape, including consequential alterations to the layout of the Ticket Hall, construction of two retail facades within the Subway, and other works incidental to the application proposal.”

(“**the Proposed Development**”)

4. The Council refused planning permission for the following reasons:

“1. The proposed development, by reason of its height, massing and architectural design would result in less than substantial harm to the Thurloe Estate and Smith’s Charity Conservation Area, the Grade II listed South Kensington Underground Station and the settings of Grade II listed 1-29 Pelham Place, and Grade II listed 45-51 and 6-12 Thurloe Square, and would fail to preserve the character and appearance of the conservation area and special architectural and historic interest of the listed buildings identified above. The identified harm is not outweighed by the public benefits of the proposal. The proposed development is therefore contrary to development plan policies CL3 and CL4 of the Local Plan (2019) and HC1 of the London Plan (2021), and guidance in the National Planning Policy Framework.*

2. The proposed development, by reason of its height, massing and architectural design would fail to respect the existing context, character and appearance of the area. This is contrary to development plan policies CL1 and CL2 of the Local Plan (2019); and Policy D3 of the London Plan (2021).

3. The Applicant has failed to agree to enter into a legal agreement to secure necessary associated infrastructure improvements generated by the development. As such the proposal is contrary to policies C1, CH2, CR4, CE1, CT1 of the Local Plan (2019); and policies DF1, H4, H5, H6, D8, T1, T2, T3, T4, T9, SI 2, E8, E11 of the London Plan (2021); and the guidance contained within the Council’s Planning Contributions Supplementary Planning Document (adopted 2019).”

5. In relation to the application for listed building consent, the Council listed the following reason for refusal:

“1. The proposed works, by reason of their height, massing and architectural design would result in less than substantial harm to the Grade II listed South Kensington Underground Station, and would fail to preserve the special architectural and historic interest of the listed building. The identified harm is not outweighed by the public benefits of the proposal. The proposed works are therefore contrary to development plan policies CL4 of the Local Plan (2019) and HC1 of the London Plan (2021), and guidance in the National Planning Policy Framework.”

6. The Residents’ Associations have objected to the Proposed Development throughout¹ and continue to do so. They therefore invite the Planning Inspector to reject these appeals.

7. It is anticipated that the Residents’ Associations will present evidence in respect of:

- a. the architectural design, scale and massing of the Proposed Development; and
- b. harm to the special architectural and historic interest, settings and significance of listed buildings, harm to the character and appearance of the Conservation Area and harm to the special architectural and historic interest, settings and significance of non-designated heritage assets.

¹ For a list of the objections made by each of the Residents Association, please see Annex 1.

8. The Residents' Associations reserve the right to present evidence on additional issues should it be considered necessary to do so.
9. As a final preliminary point, the Residents' Associations point out that the site address listed on all documents to date refers incorrectly to '20-34 Thurloe Square'. This should be '20-34 Thurloe Street'. There is also no reference to the sites fronting Pelham Street and Thurloe Square (i.e. along Thurloe Bridge).

DOCUMENTS RELIED ON

10. The Residents' Associations intend to refer to the following documents:
 - a. Relevant local and national policy and associated national planning practice guidance and local supplementary planning documents and guidance;
 - b. Historic national policy and associated historic national planning practice guidance including PPG15, PPS5 and PPS5 Historic Environment Planning Practice Guide March 2010;
 - c. National Design Guide (January 2021);
 - d. Thurloe Estate and Smith's Charity Conservation Area Appraisal (Oct 2016);
 - e. TfL and Deloitte Real Estate's South Kensington Station – Around Station Development – Development Brief of December, 2016 (“**the Development Brief**”);
 - f. Application Documents for application references PP/20/03216 and LB/20/03217;
 - g. Officer Reports to the Planning Committee dated 3 June 2021 and 18 November 2021;
 - h. Previous comments and objections submitted by the Residents' Associations (see Appendix 1);
 - i. Letter of The Victorian Society to the Planning Inspectorate dated 30 August 2022.
 - j. Previous evidence and objections / comments made by other parties;
 - k. Relevant documents produced by Historic England;

- l. The Appellant's Statement of Case;
- m. TFL Finance Report and Revised Budget, July 2020.
- n. South Kensington Station Capacity Upgrade, Design and Access Statement (October 2017).
- o. Proposed platform plans for PA/17/06372.

SUMMARY OF OBJECTIONS

11. In summary, the Residents' Associations object to the design, height and massing of the scheme and support the Council's reasons for refusal.
12. Further or alternatively, the Residents' Associations have serious concerns regarding the heritage impacts of the scheme and submit that the Proposed Development:
 - a. Will cause substantial harm to the Thurloe Estate and Smith's Charity Conservation Area;
 - b. will cause substantial harm to the Grade II listed South Kensington station;
 - c. will cause less than substantial harm to the settings of a number of listed buildings within the vicinity of the Proposed Development;
 - d. will cause substantial and less than substantial harm to the significance of various non-designated Heritage Assets within the vicinity of the Proposed Development, including substantial harm to 20-34 Thurloe Street;
 - e. fails to preserve and enhance the character and appearance of the Thurloe Estate and Smith's Charity Conservation Area, the desirability of which should be afforded special attention in accordance with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (**the PLBCAA 1990**);

- f. fails to preserve the special architectural and historic interest of the listed buildings affected by the appeal proposal, the desirability of which should be afforded considerable importance and weight pursuant to section 66 of the PLBCAA 1990²;
- g. fails to fully respect and respond to the existing context, character and appearance of the area contrary to the provisions of the RBKC Local Plan (2019); and
- h. the benefits of the Proposed Development do not outweigh the harm set out above.

THE RESIDENTS' ASSOCIATIONS' CASE

Reason for Refusal (1): Heritage Harm

Relevant heritage assets

- 13. The Appellant's Statement of Case at paras 2.23-2.24 details most of the listed buildings located within and around the Site, however the Residents' Associations would also include 6-14 Cromwell Place – Grade II (List Entry Number 1080674);
- 14. Further, there are significant non-designated heritage assets located around the Site, including:
 - a. 20-34 (even) Thurloe Street; and
 - b. 4-10 and 20-24 (even) Pelham Street.

Harm to the heritage assets and conservation area

- 15. The Residents' Associations will provide evidence demonstrating that substantial harm would result to the following designated heritage assets:
 - a. Thurloe Estate and Smith's Charity Conservation Area;
 - b. South Kensington Railway Station (Grade II Listed Building).
- 16. The Residents' Association will also demonstrate that the development would result in substantial harm to the non-designated heritage assets at Nos.20-34 (even) Thurloe Street.

² The Residents' Associations also submit that the Proposed Development fails to preserve the setting and features of special architectural or historic interest of the various listed buildings affected by the proposal, the desirability of which should be afforded special regard when considering whether to granted listed building consent (as per section 16(2) PLBCAA 1990).

17. In addition to the less than substantial harm identified by the Council to various heritage assets, the Resident's Associations will also argue that less than substantial harm would result to the setting and significance of the following heritage assets:

- a. 6-14 Cromwell Place (Grade II Listed Building);
- b. 15-18 Cromwell Place (Grade II Listed Building);
- c. 16 and 18 Pelham Place (Grade II Listed Building);
- d. 2 -18 Thurloe Street (Grade II Listed Building);
- e. 1-13 Thurloe Street (Grade II Listed Building);
- f. 52 Thurloe Square (Grade II Listed Building); and
- g. 4-10 & 20-24 Pelham Street (non-designated Heritage Asset).

Thurloe Estate and Smith's Charity Conservation Area

18. In relation to the Thurloe Estate and Smith's Charity Conservation Area, the Residents' Associations will demonstrate that substantial harm would be caused by the Proposed Development. The following factors (which are non-exhaustive) would harm the character and appearance of the Conservation Area:

- a. The form, low-scale nature and massing of South Kensington Station plays a key role in defining the existing character and appearance of the Conservation Area. In this context, the construction of the proposed large-scale new buildings within the curtilage of, adjacent to and directly on top of, the listed station complex will substantially change the form, scale, massing and architectural appearance of this designated Heritage Asset resulting in consequent harm to the Conservation Area.
- b. The design, scale and massing of the Proposed Development will cause harm to the setting of the Listed Buildings and non-designated heritage assets within the vicinity of the appeal site resulting in consequent harm to the significance of the Conservation Area.
- c. The effective destruction of 20-34 Thurloe Street will result in harm to the contribution this makes to the character and appearance of the Conservation Area

and the setting of the adjoining Listed station resulting in consequent harm to the significance of the Conservation Area. In addition, the proposed additional storey and rearward extension will harm the character and appearance of the Conservation Area.

- d. The design and architectural detailing of the proposed new buildings does not fully respond to the distinctive character and appearance of historic built development within the locality resulting in harm to the character and appearance of the Conservation Area.

19. The combined impact would be to cause substantial harm to the Conservation Area as a whole.

South Kensington Station

20. In relation to South Kensington Station, the Residents' Associations will demonstrate that substantial harm arises as a result of the following factors (which are again non-exhaustive) when considered as a whole:

- a. The Resident's Associations will argue that that the form, scale and massing of the historic station complex make a key contribution to the significance of the Listed Station.
- b. The proposed development will result in the construction of substantial new buildings both directly on top of and within the curtilage of the station complex. In this context, the Resident's Associations will say that this development is not subservient to the Listed Building, that it will cause dramatic change to the scale, massing and architectural character / appearance of the station complex and that this will result in substantial harm to the architectural and historic interest of this designated Heritage Asset.
- c. The proposed development involves the total demolition of the existing low-rise curtilage listed building comprising the Bullnose. This would be replaced with a four-storey office block which would impact significantly upon (among other aspects of the station) the setting and significance of the entrances to the station on Thurloe Street and Pelham Street and the distinctive character of the arcade.

Less than substantial harm to other heritage assets

21. The Residents' Associations align with the Council's identification of less than substantial harm to the settings of Grade II* listed 1-29 Pelham Place and Grade II listed 45-51 and 6-12 Thurloe Square.
22. The Residents' Associations will demonstrate in addition that the Proposed Development fails to fully respond to and will cause less than substantial harm to the setting and significance of the further heritage assets identified at paragraph 17 above.

Benefits do not outweigh harm

23. In light of the above, the Residents' Associations will argue that paragraphs 200 and 201 of the NPPF are applicable. Planning permission and listed building consent should be refused unless it can be demonstrated that the identified substantial harm to designated heritage assets is necessary to achieve substantial public benefits that outweigh the harm. In addition, substantial harm to grade II listed buildings should be exceptional.
24. Even if the Inspector considers that substantial harm would not be caused, the Residents' Associations submit that the heritage harm caused would be at the very top end of less than substantial harm. This harm must be given considerable weight and importance, and in the Residents' Association's submission is not outweighed by the public benefits of the scheme.
25. In addition, where there is harm to a conservation area s.72 PLBCAA 1990 creates a strong presumption against development.
26. Further to this, the NPPF provides that great weight should be given to the conservation of designated heritage assets, including the Conservation Area. Any harm to the significance of a designated heritage asset requires a clear and convincing justification.
27. The Residents' Associations acknowledge that some aspects of the Proposed Development will be of public benefit and that some aspects will be of positive benefit for the significance of the listed station, for the character and appearance of the Conservation Area and for the setting of built heritage assets within the locality. The Residents' Associations will also acknowledge that some aspects of the architectural design of the Proposed Development are of high quality.

28. However, the Residents' Associations will argue that the overall impact of the Proposed Development will cause net harm to the character and appearance of the Conservation Area, the significance of the Listed Station and the setting and significance of nearby Listed Buildings and non-designated buildings which are of local historic interest.
29. The Residents' Associations observe that a purported major public benefit of the scheme, step-free access to the District and Circle Line platforms, is dependent on the Station Capacity Upgrade Works (LB/17/06308 and PA/17/06372) ("SCU"). This is an entirely separate development, which has not commenced but been "paused" with no indication of when the work will commence (see the TFL Finance Report and Revised Budget 29 July 2020, Appendix 3, at p.37).
30. The Residents' Associations also support the submissions made by the Kensington Society in their Statement of Case. It is observed from these submissions that the s106 agreement as proposed in the Council's Committee Report (with the additional Heads of Term required by the RBKC Planning Committee) could permit a delay to step-free access to the platforms until an unspecified date. If TfL decided not to proceed with the SCU works, the s106 agreement as proposed would not force step-free access from the street to platform level to be completed and operational. Certain proposed public benefits of the Proposed Development are therefore not sufficiently guaranteed and must be afforded lessened weight as a result.
31. The provision of some affordable housing (albeit not meeting the 50% requirement for provision of affordable housing on public sector land nor RBKC's 35% target based on floorspace) is not a sufficient benefit to outweigh the heritage harm identified above.
32. Accordingly, the Resident's Associations will say that the harm caused by the Proposed Development will outweigh the public benefits of the scheme and that it cannot be accepted as a sustainable form of development.

Reason for Refusal (2): Townscape and Design

33. The Residents' Associations align themselves with the position of RBKC in respect of the Proposed Development's non-compliance with Policies CL3 and CL4 of the Local Plan (2019) and Policy D3 of the London Plan (2021). The Residents' Associations will argue that the architectural design, height and massing of the proposed development does not fully respond to the distinctive context, character and appearance of historic built development within the area.

34. The Residents' Associations do not object to the principle of development of South Kensington. They submit, however, that the Proposed Development does not align with the character and sensitivity of the area, in particular given its Conservation Area status. This is particularly disappointing given the development over several years of the Development Brief which provided for a "conservation-led" approach to development of South Kensington.
35. In this context, the Residents' Associations will say that the proposal is not adequately sympathetic to the local character and history of the area, does not adequately maintain the existing sense of place and does not meet Local Plan's requirements for design quality for *inter alia* the following reasons:
- a. The design, scale and massing of the proposed development does not properly reflect the established and historic pattern and scale of development within the locality and will appear over dominant and visually inconsistent in relation to the Listed station and the existing built development adjoining and in the vicinity the appeal site.
 - b. The Proposed Development's architectural style is inconsistent with the character and appearance of the Conservation Area.
 - c. The proposed development behind the retained façade at 20-34 Thurloe Street (including the associated upward extension) will remove the distinctive rear elevations of the existing building and will degrade and damage the contribution which this property makes to the character and appearance of the area.
 - d. The proposed development of the Bullnose will result in a four-storey office building which will dominate over South Kensington Station.

CONCLUSION

36. For all of the reasons set out above, and further reasons to be explored in the course of this Inquiry, the Residents' Associations will in due course respectfully invite the Inspector to dismiss the Appeal and refuse planning permission and listed building consent for the Proposed Development.

Farrer & Co LLP

October 2022

ANNEXE 1: OBJECTIONS MADE BY THE RESIDENTS' ASSOCIATIONS

1. PSRA submitted the following objections and comments to the Council:
 - a. Letter from Farrer & Co to the Council dated 4 September 2020, enclosing Heritage Statement prepared by Mr Ward-Booth dated 3 September 2020 and Daylight and Sunlight impact analysis by Mr Hensey dated 26 August 2020;
 - b. Letter from Farrer & Co to the Council dated 25 September 2020, enclosing review of the GIA DSL Report dated 24 September 2020;
 - c. Letter from Farrer & Co to the Council dated 12 February 2021;
 - d. Letter and comment from PSRA to the Council dated 28 April 2021, attaching a series of rendered images;
 - e. Comment made to the Council dated 21 May 2021; and
 - f. Letter and comment from PSRA to the Council dated 15 November 2021, attaching a series of rendered images.

2. PRA submitted the following objections and comments to the Council:
 - a. Objection Letter dated 26 August 2020;
 - b. Joint Planning Objection commissioned by ONA, PRA and TOLA dated 4 September 2020, together with attachments (including Heritage Appraisal dated 3 September 2020);
 - c. Objection letter dated 5 February 2021;
 - d. Joint objection made by ONA, PRA and TOLA dated 26 March 2021, together with attachments (including Heritage Appraisal dated 9 March 2021);
 - e. Objection letter dated 28 April 2021;
 - f. Letter from ONA and PRA to the Council dated 9 November 2021, together with attachments;
 - g. Comment made to the Council dated 27 September 2021.

3. ONA submitted the following objections and comments to the Council:
 - a. Letter from ONA to the Council dated 29 May 2020, together with attachments;
 - b. Joint Planning Objection commissioned by ONA, PRA and TOLA dated 4 September 2020, together with attachments (including Heritage Appraisal dated 3 September 2020);
 - c. Joint objection made by ONA, PRA and TOLA dated 26 March 2021, together with attachments (including Heritage Appraisal dated 9 March 2021);
 - d. Further Letter of objection by ONA dated 26 September 2021;
 - e. Letter from ONA and PRA to the Council dated 9 November 2021, together with attachments.