

Applicant's Closing Submissions

“...she came with an SS man. I knew he came to kill us. But for some reason he didn't want to kill me. They killed my brother. He was just 7 years old...”

- Janine Webber

Introduction:

1. The incomprehensible evil of the Holocaust.
2. But why should we as a nation memorialise Janine's little brother and the six million Jewish men, women and children who were pitilessly slaughtered by the Nazis and their collaborators? Why should we as a nation share knowledge about them and all the victims of this, and subsequent genocides; and challenge ourselves to think about our nation's responses to these unfathomable crimes against humanity? Why now? And why here, in the lea of Parliament, known throughout the world as the heart of our democracy?
3. Listener, reader, you should know the answers to these questions *instinctively* for they are visceral.
4. Although there are some who wish to do so, it isn't the task of this inquiry to gainsay the Government's decision that we the nation should memorialise, that we the nation should learn and that we the nation should do so now. They are givens.
5. And the location? It is the task of this inquiry to consider whether the proposal *where* proposed should be allowed to proceed. Of course, the answer has to be written up through the lens of planning statutes and policies and material considerations. But the answer is not prosaic. It is poetic. Beginning, middle and end the answer is simple. This nationally and internationally important location is *extraordinarily* fitting for this nationally and internationally important memorial and learning centre. The resonance between site and scheme is profound. The

symmetry is striking. And yes, it was a moment of genius when this location was chosen.

Purpose of the UKHMLC:

“This is a sacred task for our nation” - the Chief Rabbi

6. The Co-Chairs of the UKHM Foundation explained that: “While the Memorial will honour the six million Jewish people murdered in the Holocaust, the learning centre will also remember the other victims of Nazi persecution, including Roma, gay and disabled people, and the victims of subsequent genocides in Cambodia, Rwanda, Bosnia and Darfur.”¹ The UKHMLC seeks to ensure that the voices of survivors are not replaced by those of deniers, to prevent the normalising of prejudices, to learn the lessons of the Holocaust and other genocides, and to see the Holocaust’s part in British history. To quote the Co-Chairs:

“To establish a new national Memorial at the very heart of Westminster is an ambitious aim. Only the most serious, momentous and profound subject matter could justify such a step. With the Holocaust- the systematic attempt by a modern, civilised state to exterminate the whole Jewish people- we have exactly such a reason.

We also have a pressing need. Seventy-five years after the liberation of the death camps and the end of the Nazi regime, we see evidence across the world of revisionism and even outright denial that the Holocaust took place. We see the re-emergence of anti-Semitism, even on our own streets and within our own communities. And we know that the eyewitnesses who can directly challenge revisionists, and who provide the most vivid demonstrations of where anti-Semitism can lead, will not be with us much longer.”²

“The thematic exhibition will set the Holocaust within the British narrative. ... The narrative will be balanced, addressing the complexities of Britain’s ambiguous responses to the Holocaust, avoiding simplistic judgments and

¹ CD 8.1 para. 44

² CD 8.1 paras. 52, 53

encouraging visitors to critically reflect on whether more could have been done, both by policymakers and by society as a whole.”³

“It is essential that we act now to establish a Memorial that will boldly, prominently and permanently remind us of the Holocaust.”⁴

7. It is nigh on impossible to convey the *collective* eloquence of the testimony of those who spoke simple truths about the national and international importance of the UKHMLC.
8. Reminding ourselves of just some of what they said suffices to remind ourselves that this case is like no other. And to remember that is to remember just how important it is that we do the right thing. None of us ever have been, and none of us ever again will be involved in a planning inquiry like this.
9. David Cooper reminded us that anti-Semitism never goes out of fashion. It is a light sleeper:

“By any objective standard, this memorial is well and truly overdue...This application needs to be granted and it needs to be granted quickly, as the problem is getting ... worse, as time goes on”.

10. Jaya Pathak:

“As a leading international force in the fight against prejudice and discrimination of all forms, it is time for Britain to give an equivalent space for the memory of the Holocaust in our capital city.”

11. Fiorella Massey:

“History does not stand still...The Holocaust must form part of our collective memory particularly in light of the deniers, who seek to foment conspiracy theories and play on ignorance of the facts...The scheme is a

³ CD 8.1 paras. 45, 46

⁴ CD 8.1 para. 54

clarion call for all civilised nations to be up-standers, not bystanders...It is the right time. It is the right place. It is overdue.”

12. Judith Adda:

“...the current, alarming rise in worldwide anti-Semitism has clearly identified the urgent need for stronger, more impactful teaching, a more contemporary approach to learning the lessons of history and a more sophisticated educational medium in which to remind us all and teach the younger generations of the terrible events of the Holocaust in Europe and what led up to them.”

13. Dr. Toby Simpson, Director of the Wiener Library:

“The Holocaust is a profoundly disturbing subject. It is nevertheless a subject we must all confront and learn about if we wish to become full and responsible citizens in the twenty first century. We need to do so in order to make sense of the world, with all of its rich humanity along with its bewildering and often shocking inhumanity. We cannot escape the fact that the history of the Holocaust is complex and often difficult to get to grips with; we also cannot escape the fact that it is powerfully emotive and resonant and, sadly, highly relevant today as we strive to fight the rising tide of intolerance, anti-Semitism, racism and prejudice.”

14. Rudi Leavor:

“It is both for the memory of those who perished and the opportunity to learn about their experiences, I feel it is imperative that there is a Memorial and Learning Centre...This is a matter of honour for our country...The siting of the proposed memorial in Victoria Tower Gardens makes a bold statement, which cannot be missed and would proudly stand to expose the shame, depravity and darkness of the Holocaust for as long as the Houses of Parliament will stand...I firmly and strongly and passionately believe that this proposed Memorial and Learning Centre will frame the story of the Holocaust in public consciousness. It will bring awareness of the greatest tragedy in the history of mankind. It will act as a warning as to the evil that mankind can do.”

15. Mala Tribich MBE:

“I am 90 years old. I intend to share my testimony for as long as I am able to, but there will become a time when this is not possible. As the Holocaust moves further into history and we survivors become less able to share our testimonies this Memorial and Learning Centre will be a lasting legacy so that future generations will understand why it is important for people to remember the Holocaust, to learn from the past and stand up against injustice. The memory of the Holocaust cannot be left to fade when us eyewitnesses are no longer able to share our memories.”

16. The Chief Rabbi said of the Holocaust survivors:

“...There’s a panic in their voices. They are saying one thing to me. Please, world, never forget. They know they cannot live forever. They are asking us to be their ambassadors. They fear the world will forget in the course of time. We have a responsibility to ensure we will remember...”

17. Natasha Kaplinsky OBE whose life was changed by recording the testimony of 112 Holocaust survivors:

“...The common theme of these survivors was that they had not told their story before - to anyone. They had kept their secrets in order to protect their families from the horror - but then, toward the end of their lives, there seemed to be an urgent (an almost panicked) need to unburden themselves of their experiences before they left us.

...The survivors I spoke to trusted me with their testimony in large part because they knew it was being recorded for the benefit of generations to come and that it would be housed in a learning centre that would and could be accessed by their grandchildren and their grandchildren’s children.

...The voices of these 112 survivors haunt me and in equal measure inspire me...in sharing their pain they have given us collectively the responsibility to do something with it and to learn from them.

...

The placement of this Monument and Learning centre is an opportunity to give them a semblance of peace and stillness at the end of their lives. I

believe it is the greatest chance we all have to illuminate our thinking and enlighten the generations that follow. This is a project that goes well beyond any boundaries and I beseech you to see its National and International significance for the sake of humanity.”

18. Kish Alam spoke of the opportunity to *disrupt Holocaust denial* that the memorial and learning centre would provide.

19. Jaya Pathak:

“...I first heard from a Holocaust survivor when I was 17 years old and it changed my life...As Holocaust survivor and Nobel Laureate Elie Wiesel said, ‘When you hear from a witness you become a witness.’ I am now a witness to the truth.”

20. Mr. Adrian Packer CBE:

“These truths must not be tucked away in a vault or diluted. In fact, the words of survivors should be amplified and given a major platform to be heard far and wide.”

21. Ellie Olmer:

“It will educate this and future generations about the dangers of prejudice, discrimination and hate speech in a time of rising extremism. It will be a place to go, to allow time and space to learn, to sit, to engage, to challenge, to listen, to reflect and ponder, to set the record straight and actively educate for the common good. For its visitors, seeing will be believing, understanding and remembering. The Nazis and perpetrators since have gone to great lengths to hide the extent of their crimes, remembering is an act of justice that gives dignity back to the victims. As Elie Wiesel reminds us, ‘To forget is akin to killing a second time.’ ...

When we look back in the tarnished mirror of history, what do we see? The catastrophe of the Holocaust is that it has not finished. There has been a failure of genocide prevention since 1945, atrocities, injustices, prejudice and discrimination continue. ...

Building the memorial is an important, urgent, natural and right evolutionary step in our story. We have an obligation to the past and to each other.”

22. We make no apology for reminding the inquiry of some of the testimony to this effect. It should shake us to the core. It provides the true context for considering the objections that have been raised - the views that would be changed towards Parliament, or of the Buxton Memorial, the grass that would be lost, the people who would come to the gardens who otherwise would not have, and all the other effects that have been drawn attention to- all these things would happen because there is a *far, far more important greater public interest in play here*.

Location:

23. A proposal of such obviously profound national and international importance warrants being located, as chosen, at the heart of Westminster, beside Parliament, in Victoria Tower Gardens, a place of national significance adjacent to a World Heritage Site.

24. There surely can be no doubt that the site is prominent.

25. Its symbolism is obvious.

26. In truth, it is hard to understand how any explanation is required so self-evident is the point.

27. As the Co-Chairs said:

“A dignified, striking Memorial prominently placed amongst our national institutions of Government will symbolise [the] noble aspiration...”of the proposal.⁵

⁵ CD 8.1 para. 56

28. Many of those who spoke at the inquiry strongly endorsed this.

29. Dr. Toby Simpson:

“...The Holocaust is widely recognised as the defining event of twentieth century European history, and as the worst and most extreme atrocity perpetrated in the history of human civilisation. In my view, it is fitting for the memorial to be located in a position of the greatest possible prominence to reflect that fact.”

30. Karen Pollock CBE:

“its location will send an important message to us all- that the horrors of the past are central to Britain...that the leadership of our nation sees the central place that the Holocaust has on our shared history and identity.”

31. Eric Murangwa Eugene MBE:

“having a new UK Holocaust Memorial and Learning Centre built at the heart of the world’s greatest city and next to the symbol of the home of British democracy will have a huge significance on how the UK and the world at large will remember and learn about the Holocaust and modern genocides in the future.”

32. Natasha Kaplinsky OBE:

“I have listened to an endless list of people over the past...weeks- with a great deal of respect (of course), and in many cases, with understanding and sympathy for what they have said, but I feel they are missing the point of what this Memorial and Learning Centre is about and why the significance of its positioning in Victoria Tower Gardens is so poignant. The placement of the memorial gives the subject the prominence it most certainly deserves and changing its location, as many of the past speakers seem to promote, would profoundly relegate its significance.”

33. Martyn Heather:

“To me there is only one place the UK holocaust memorial can be and that is right next to the seat of our democratic government, it sends an unequivocal and powerful message...”

34. The Archbishop of Canterbury, Justin Welby:

“The proposal for a Holocaust Memorial with a Learning Centre by the Houses of Parliament and across the river from Lambeth Palace provides a symbolic opportunity to present the full story to new generations. It is a story that will not, and cannot be a comfortable piece of public self-congratulation by the establishment. Rather, it offers an opportunity to learn what we did wrong, as well as celebrating what we did right. Its position by the seat of UK government is a necessary challenge to our national life: that the seeds of such cultural and religious hatred would never be allowed to take root here again. Make no mistake: those seeds were here in the UK too.”

35. The Chief Rabbi, with our emphasis:

“It is an inspirational choice of venue. This is the most wonderful location because it is in a prime place of prominence, the heart of our democracy. We don’t want to tuck the Holocaust under a bushel somewhere like the tiny monument in Hyde Park that most people have never heard of. We want all British society to know. For the sake of all of us...and a hopefully stable future.”

36. Adrian Packer CBE referred to the location as:

“...the only place fitting the magnitude of [the] project’s ambition and its importance to shaping modern British society.”

37. Kish Alam:

“...it has to be in Westminster. It has to be in the most important of places... Westminster is and should be the place where deeper meanings are

pondered and the lessons from the past are considered to help shape the decisions which affect all our futures.”

38. Mala Tribich MBE:

“I really believe that a memorial next to Parliament, where vital decisions are made, will help us to learn the vital lessons of the past. What better symbol to remind our Parliamentarians and the wider public of where apathy as well as prejudice and hate can ultimately lead? ...A national memorial, in the shadow of Parliament, will enable not just hundreds of thousands of British students to learn more, but countless other members of the public to do so too.”

39. Ellie Olmer:

“The place from which you remember an event shapes how you remember it- and it has radically different meaning in the place that it’s told. That place, where we are telling the story, Victoria Tower Gardens, Westminster, has immense strategic interest. An energy and dynamism of its own. A place of prominence- and it’s that that will shape and guide a visitor’s all-embracing experience. This is the heart of British democracy, of the rule of law, of justice and fairness. All roads lead to here...Surely if it’s going to be built anywhere, for purpose, meaning and relevance, this is where it has to be.

Critics have asked the question, ‘What’s the Memorial got to do with Britain?’ That’s one of the very reasons we need it. ...

It will allow us to face the truth of that history- which is not quite the well-established redemptive narrative we are led to believe. The reality is far more complex, problematic and messy. It is flawed. We must face the past with truth and honesty, address its misappropriated and mis-sold aspects in our collective and selective memory.

Put simply, this is also the place where, along with our allies, the government failed to take appropriate action, repeatedly. The signs were all there and missed.”

40. In the words of Sir David Adjaye:

“The location gives this momentous memorial the gravitas it needs...”

41. The high profile of the memorial and learning centre *matters*. Natasha Kaplinsky OBE put it well:

“Our current national memorial in Hyde Park is wholly inadequate, it is not much known about - and through our consultations we have learnt that it is felt to be out of sight and with no context.”

42. And whether it is an accident of more recent history or the result of conscious thought, it is obvious that there *is* a theme to the memorials and monuments in Victoria Tower Gardens [VTG] which we have dubbed “a garden of conscience” which seems apt. The UKHMLC would add, powerfully, to this narrative.

43. A number of speakers spoke of this. Jaya Pathak considered the point “crucial.” And Judith Adda:

“Sited beside the important memorials to Women’s Suffrage for which I helped to campaign and the Emancipation from Slavery, it *is* therefore the most appropriate place to educate everyone...”

44. Fiorella Massey welcomed better bringing the existing memorials to our attention:

“...The increased footfall will help shine a light on these important stories from our shared past which are all too often overlooked.”

45. Turning to *the site selection process* and then to (what we characterise as) so-called *alternative locations*, these topics have taken an inordinate amount of time at the inquiry but in truth the points raised by objectors are a series of distractions.

46. The way in which VTG was chosen can either be characterised, as we do, as the *outcome* of a site selection process which failed to find a suitable site and then the opportunity arose to locate the HMLC in VTG- the moment of genius- the

profundity and symbolism of which was obvious to all involved and which put all the other locations that had failed to meet the proponents' aspirations even further in the shade.

47. Whereas others characterise the process as insufficiently systematic.

48. Does any of this matter?

49. Logically, *if* the Inspector and/or the Minister share the Applicant's conviction and that of others that this location is well-suited for the UKHMLC *then* it really doesn't matter at all whether it was alighted upon as the result of a great deal of ink spent writing reports or a flash of inspiration.

50. The point is a simple one. *If* it is concluded that any harm that the proposals would cause *in this location* would be outweighed by the public benefits of the proposals *in this location* (applying the statutory, case law and policy presumptions as relevant) *then* the proposals should be permitted. In these circumstances, the proposals simply could not be refused on the basis of criticisms of how we ended up choosing the site in the first place. It is a non-point.

51. As for alternative locations: our opponents' line of argument is that alternative locations for the proposals are relevant (in planning-speak, are "material considerations") in the sense of (so the argument runs) the ability to meet the need for the UKHMLC somewhere else where no harm would be caused or less harm would be caused than meeting the need in VTG. We accept that as a matter of law, *if* there is such a location *then* that can be a material consideration.

52. However, the point goes nowhere in the circumstances of this case.

(1) The only alternative location that has been referred to (time and again) by our opponents is the IWM.

- (2) The IWM *was* referred to as “a viable option” in the PM’s Holocaust Memorial Commission’s Report “Britain’s Promise to Remember” published in January 2015⁶ **but** (a) that reference was qualified by the following proviso: “*provided a way can be found to meet the Commission’s vision for a prominent and striking memorial.*”⁷ And (b) the fact of the matter is that as explained by the Rt. Hon. Ed Balls⁸ and by Chris Goddard⁹ this proviso was never met.
- (3) This is why we say “so-called” alternatives as on the one hand we have *the application site* in VTG which most certainly meets the vision for a prominent and striking memorial, and on the other hand we have nothing, nothing at all, because the IWM does not meet that vision. And so:
- (4) The IWM is not an alternative location at all because it simply would not meet the identified need for a prominent and striking memorial. This is particularly important because WCC acknowledge that VTG is a suitable location for a memorial to the Holocaust.
- (5) VTG was identified as the location for the UKHMLC after the publication of the 2015 report. It lies at the heart of our case that the symbolism and resonance of the chosen site is unique. And so a straightforward way of putting the point is that the IWM is not an alternative at all for the simple reason that unlike VTG, the IWM is not adjacent to Parliament.
- (6) Chris Goddard also made the sensible observation that there is no alternative before this inquiry upon which one could make an objective comparison in the sense of having something tangible to assess. The easiest way to visualise this is to think of the application which comprises detailed plans and dozens of detailed supporting documents on the one hand, and on

⁶ CD 5.9 page 54

⁷ Op. cit.

⁸ In chief, cross-examination and re-examination

⁹ In re-examination

the other hand what do we have about the IWM? - a screen-shot of an image in a 2017 AJ article.¹⁰

(7) The final reality-check is the point made by Chris Goddard¹¹ that there is no evidence at all that were the application to be refused, the proposals would migrate to the IWM.

53. In colloquial terms, and none the worse for that, the IWM is a red herring.

54. As Chris Goddard said of VTG “this is an appropriate and suitable and, of the options I’m aware of, the best site”. *On the evidence*, he is right.

55. There was an interesting international parallel drawn by Paul Shapiro of the United States Holocaust Memorial Museum, speaking of the report of the US Commission on the Holocaust which recommended the establishment of a museum in Washington DC:

“The report elicited considerable public criticism. Some critics asserted that emphasising the dark potential of which humans are capable, epitomised by the Holocaust, in the midst of the many monuments to human and national achievement located in the national capital would be inappropriate. Better, the argument ran, to reconsider the entire enterprise or, failing that, to construct the memorial in some other city.

Other critics argued that the Holocaust was a European event, not one central to the American experience, and that efforts to make the Holocaust relevant for Americans would fail.

Still others made less savoury arguments...

You can see the parallels.”

¹⁰ The screen shot was part of Mr Lewis’ 9/11/20 email to the inquiry

¹¹ In re-examination

56. Two more points about “alternatives”: *first*, the Government has decided that there is to be a national HMLC; some have argued that there shouldn’t be, for example because there shouldn’t be a new memorial and/or there are other better ways to educate and so there shouldn’t be a learning centre and/or the money would be better spent elsewhere or in other ways, and so on and so forth **but** these are not legitimate “alternatives”- they are *beside* the point because they *miss* the point that it is no part of the inquiry’s remit to gainsay the Government’s decision that there is to be a national HMLC.

57. In any event, Dr Toby Simpson, Director of the Wiener Library, which is Britain’s largest collection of evidence of the Holocaust and the Nazi era and the oldest collection of its kind anywhere in the world, was unequivocal about the potential for the proposed Memorial and Learning Centre to add value to that work. As he sees it:

“This is also a once in a lifetime opportunity for a new and more sustainable framework of education, research and remembrance to be established in this country, and that opportunity should not be missed.”

58. *Secondly, co-location:* in similar vein, the proposals are for the UK HM and LC. It seems obvious that it is a good idea to memorialise and learn in the same place but there are those who argue that the Memorial could be placed in one location and the Learning Centre somewhere else. All very interesting **but** nothing to the point as any such ideas are not legitimate “alternatives” to the proposals which are before the inquiry which reflect the Government’s settled decision that there is to be a UK HM and *co-located* LC. It is not for the inquiry to cast asunder the proposals.

The Design:

59. The Memorial including the descent to the Threshold and thence the Learning Centre is a masterpiece.

60. Visitors to VTG don't have the opportunity to hear from and discuss with the artists the why and the what of the existing memorials in the gardens (a conversation between Dr Gerhold and Rodin about the Burghers of Calais would have been truly fascinating) but here we are fortunate to have heard first-hand from the remarkable, world-class, artists and architects who together have drawn up the proposals for the UKHMLC.

61. Giving an overview, Sir David Adjaye, RIBA 2021 Royal Gold Medal winner and the lead design architect for the project, explained its architectural and placemaking qualities, which were driven by a deep understanding of the local context and the project's significance. He was extremely excited to have the opportunity to make this memorial, to make something have resonance not just in architecture but in the world. Having studied every Holocaust memorial in the world he hoped that it would trigger a new idea about how to make a memorial.

62. He explained how the design is *bespoke* and befitting only to Victoria Tower Gardens. The historic site and its context has coloured every aspect of the concept.

“With the park as it exists now- its vitality and its beauty- these are features that we want to harness and expand upon... to create the new Memorial.”¹²

63. The proposals fulfil all of the core objectives of the project.¹³ Sir David explained that it was his intention from the outset to create a concept that is thought-provoking, sitting within an occupied and useable park where visitors can engage with the park and the memorial simultaneously, thereby understanding the impact of the narrative of the memorials within the setting of Parliament.¹⁴

“We want to capture the dark and the light that coexist, the loss and the hope experienced in life...”¹⁵

¹² CD 8.3 para. 3.1.14

¹³ Op. cit. 3.2.5 – 3.2.18

¹⁴ Op. cit. 9.1.2

¹⁵ Op. cit. 9.1.8

64. Robert Rinder referred to some having said that the proposed memorial stands ‘in the looming shadow’ of Parliament:

“That is the wrong way to describe it. The design and position of the monument places neither edifice in darkness. They are precisely positioned to bring light to each other.”

65. Asa Bruno, the designer of the Memorial itself, explained the overall concept of the design and its aims, the features of the memorial, its symbolism, the balance in the different uses of the site, the placement within the site, the relationship with existing memorials, and accessibility.

“Developing the proposal for the Memorial has been a tightrope walk between the absolute need and wish for it to be both an emotive and significant presence in the public domain, and an integral part of the gardens, peacefully co-existing within the wider context.”¹⁶

66. What does the Memorial need to do, from a design perspective? As the Holocaust nears the edge of living memory, it was in Asa Bruno’s words “a daunting task”¹⁷ to formulate a design to honour the victims and survivors, and also to make it inclusive, relevant and strongly resonant with any who visit it, and especially a younger and broader audience.¹⁸ The Memorial needs to *resonate* with both living survivors of the Holocaust and their relatives, and also with current generations and the generations to come who have no living memory of the Holocaust. It also needs to resonate universally with survivors of other atrocities and their relatives.¹⁹

67. It seems to us that having heard Asa Bruno it is clear that the Memorial is in hands worthy of this sacred task.

68. As he says:

¹⁶ CD 8.5 para. 2.20

¹⁷ Op. cit. 4.1

¹⁸ Op. cit. 4.2

¹⁹ Op. cit. 2.23

“We will have succeeded if even a fraction of future visitors to the Memorial and Learning Centre leave with an enhanced sense of their individual responsibility as citizens”.²⁰

69. In terms of its physical features, the Memorial does not have a ‘front’ or a ‘rear’ but is rather multifaceted and intended to offer diverse impressions, both visually and experientially.²¹ It is sculptural. As is the gentle amphitheatrical slope which would give new views towards Parliament from an elevated position as well as views of the Thames over the river wall.²²

70. What of the references and symbolism of the Memorial? The 22 ravine-like pathways between the Memorial’s 23 patinated bronze walls represent the number of countries in which Jewish communities were destroyed during the Holocaust.

71. Words fail us to describe the challenge that came Mr Bruno’s way to justify the reference to 22 countries. The challenge seemed to misunderstand the symbolism of art, sculpture and architecture. Asa Bruno explained in answers in cross-examination and in two notes submitted to the inquiry²³ that the key is to understand (emphasis added) that:

“...in creating this proposed Memorial, as a piece of art, on an architectural scale, we can only use our own interpretation of narratives, and translation of statistical and numerical data into **artistic motifs**. This is hardly scientific but is, I believe, carefully considered and well-informed.”

72. Three of the pathways would be open for people in the gardens to walk through. Most of the pathways would be experienced from within the Memorial itself with the descent to the Threshold wide enough for someone to pass in between in single

²⁰ Op. cit 2.24

²¹ Op. cit. 7.3

²² Op. cit. 7.4

²³ CD 11.7 and CD 11.8

file. Therefore the passage taken is one that each visitor takes alone. “It is a shared experience only from a distance.”

73. One of the strongest aspects of the design is its ability to affect people viscerally and emotionally. Asa Bruno:

“We conceived of the Memorial as an experience, not an object on a plinth. We have drawn upon many contextual and symbolic references in its conception, but these are discreetly integrated into the process, rather than demarcated by letters or emblems. Visitors may or may not appreciate this, or they may understand the references the Memorial draws upon to a greater or lesser extent, but this isn’t crucial for the experience - we strongly believe they are unlikely to remain unmoved by it.”²⁴

74. It was felt from the start of the process that the key to making the Memorial relevant and resonant with a broader, younger audience, and its message more universal in reach, is through it being experiential.²⁵

75. The designers wanted to avoid using overtly familiar pictographic symbols such as the Star of David, or Hebrew lettering, but alongside the physical experience the Memorial is infused with symbolic meaning, which lies at its core, and the choice of bronze as the principal material is inspired- “It bears evidence to some of humanity’s best and worst achievements.”²⁶

76. The first guiding principle or motif in its design stemmed from the ‘lifting of the fabric’- as an expression of the gradual upheaval lurking beneath the surface, and the fragility of democracy and how easily and abruptly it can break down. This took the form of a gentle slope, the more dramatic face of which is revealed from the south. Whilst the series of paths through the Memorial are layered with symbolism, recognition of these references is not required in order for them to be experienced.

²⁴ CD 8.5 para. 2.2

²⁵ Op. cit. 6.1

²⁶ Op. cit. 6.2 – 6.5

77. As for the symbiotic relationship between the Memorial and the gardens, Asa Bruno was emphatic that from the inception, the vision for the Memorial went hand in hand with:

“... the desire to both protect and improve an important central London asset, as well as create a connotative experience of the dramatic contrast between the day-to-day routine of a safe life in a sound democracy, and the slow and insidious creep of intolerance, sedition and hatred and where those could lead.”²⁷

78. This was approached in a careful way. The desire, from competition stage, has been to site the Memorial as far south within the site as possible, noting that the southern end of the site is both the tightest in terms of available space (due to the triangular form of the site), and the darkest, as a result of the closeness of the overhanging boughs of the trees running alongside both edges of the park. The design team agreed that in that context they could minimise the impact on the wider, open, well-lit and more frequently occupied parts of the garden to the north. This would also place the Memorial further away from the Palace of Westminster, thereby reducing the potential visual impact on far-reaching views of the historic building. At the same time, with such a backdrop, the Memorial would command a pivotal position and provide a new vantage point from which members of the public could view the Houses of Parliament and the river Thames.²⁸

79. Asa Bruno described how a significant part of the site appraisal involved the exploration of how to sensitively fit what would become the Memorial fin walls into the narrower end of the site. The site’s triangular layout helped shape the memorial into a south-facing horseshoe arrangement, which will allow its component fins and the paths in between them to appear integral to the newly proposed site landform. Also, careful consideration was given to how to emphasise the Memorial’s geological rather than architectural character, so that it

²⁷ Op. cit. 4.3

²⁸ Op. cit. 5.1 5.2

would appear as part of a landscape rather than an object on a plinth. Therefore the Memorial is mostly embedded in grass with extensive areas of the perimeter around the courtyard being densely planted and treated in a manner which helps to embed it further within its context.²⁹

80. It is also important to note that the experience of the Memorial within the gardens is to be shared between those visiting just for that purpose, and those simply visiting the gardens.

81. The journey to the Memorial from the north begins with the landscaped path which acts as a narrative journey connecting the Emmeline Pankhurst Memorial, Rodin's Burghers of Calais, the Buxton Memorial, and the Spicer Memorial.

“When viewed from the northwest corner by the Palace of Westminster, the memorial is first perceived as a gradual rising hill towards the south end of the Victoria Tower Gardens. Along the journey south, the path inscribes the rising landscape, and leads along the embankment past the Buxton Memorial after which the full scale of the memorial is revealed. The elevated land mass is both hill, and cliff-like landscape, and is held aloft by 23 tall, bronze-clad walls. The overall volume inscribed by the walls offers an interplay between robustness and frailty; cohesiveness and fragmentation; community and individualism.”³⁰

82. Importantly, the relationship between the Holocaust Memorial and the Buxton Memorial- its closest neighbour- has, ever since competition stage, been of the utmost importance to the design team. Careful thought was given to the immediate context of the Buxton Memorial within the new proposed scheme.

“A radial indentation in the grassy landform forms a natural amphitheatre and was created in order to allow for peripheral lighting and a perimeter seating bench around the Buxton Memorial. In this way it was envisaged that the Buxton Memorial's colourful spire will remain on axis and in view from Dean Stanley Street and St John's Smith Square, but would be given

²⁹ Op. cit. 5.3 and CD 8.6 para. 7.7

³⁰ CD 8.5 para 6.7

spatial significance within the park and a new setting which would allow for the first time a place of rest and reflection for visitors to the Buxton Memorial, with outward views towards the Houses of Parliament and the Thames”.³¹

83. The Memorial has been designed to offer visitors of differing physical abilities the opportunity to experience it fully. For example, the mound is carefully designed to allow wheelchair access. The revised boardwalk will for the first time offer wheelchair users a view of the Thames. The Memorial Courtyard is ramped all the way down towards the Memorial, and lined with benches. Three of the Memorial paths are ramped, and the Memorial lift itself is a bespoke solution, benefiting from glazed doors offering a continuous view to the Threshold along the entire journey down. Therefore, whilst Rowan Moore claims³² that wheelchair users somehow would have an inferior version of the narrative or experience of the Memorial, this couldn't be further from the truth.

84. In Asa Bruno's words:

“I believe the design has achieved the goals set for it, and manages to establish a unique place, iconic in nature and subtle in variation, evocative of emotions and experiences without being literal or manipulative. I also believe it will achieve the highest challenge, that of successfully resonating universally for years to come, with survivors and relatives of other atrocities”.³³

85. Professor Greenberg walked us through the Learning Centre and described the powerful, **visceral** experience for visitors. He explained in his evidence in chief how the exhibition is to be “structured around its location in Westminster” recalling “the first thing that Michael Berenbaum said to me when I sat down with him at the USHMM in 1996 shortly after winning the competition to design the IWM Holocaust Exhibition- *“the place where we remember defines what we remember”* Many speakers have referred to Mr. Berenbaum's profound insight.

³¹ Op. cit. 5.4

³² CD 8.52 para. 4.2.5.3

³³ Op. cit. 9.4

86. The descent through the Memorial would be a profound part of the experience. The Threshold is a critical part both of the interpretive design as well as the architecture. As Professor Greenberg explained, at this stage we have to imagine what this space will feel like: it would be dramatic and intense. When the original IWM Holocaust exhibition, for which Professor Greenberg is responsible, opened in 2000, it was considered both ground breaking and innovative. We have no doubt that a new generation of filmmakers, scriptwriters and artists will achieve similar innovation in the Learning Centre building on the conceptual master-planning framework that Professor Greenberg has set out for them. The size of the Learning Centre would be more than ample to deliver a truly moving, challenging and thought-provoking exhibition.

87. Integral to the scheme as a whole are the landscape design proposals which will constitute another layer- with a good claim to be the most distinguished to date- in the historical evolution of the gardens which have changed and changed again and again with the march of time and ideas, tastes and styles.

88. As Donncha O Shea explained, whereas VTG is perceived as a predominantly flat open space, that does not mean that it is an even surface. There are in fact undulations across the hard and soft surfaces which together with compaction creates ponding of water. This reduces the useability of the lawned spaces by visitors to the driest months. The central lawn is well used at lunchtimes on sunny days in summer, but is unusable during the wet periods and the winter months. However, with the right sub-base and lawn specification, it will be possible to regrade and improve the condition of the lawn to provide year round support to activity.

89. Similarly, as Dr Miele said:

“VTG is very very rich in terms of its associations and its meanings and its purpose, but as a landscape design it’s fairly ordinary. It’s green sward with perimeter belts of trees...[a] very closed space, and perimeter paths laid out

in asphalt. Not to diminish it, but those are its characteristics as a landscape.”

90. We do not consider that the gardens would be transformed into simply being the setting of the UKHMLC- it seems more apt to think of the gardens as being enriched, and multifaceted.

91. It is commonplace for contemporary masterpieces which become the cherished heritage of future years to be subject to criticism and controversy at their inception. The rich seam if you will of what is denigrated today being venerated tomorrow.

92. That said, it is important to note that the City Council do not criticise the quality of the design of the proposals, as Robert Ayton confirmed in cross-examination.

93. The GLA commend the quality of the design of the proposals.³⁴

94. Instead, the criticism has been led by the architectural critic, Rowan Moore. The evidence of the four designers and Professor Tavernor in their proofs and rebuttals and that given orally at the inquiry responds point by point to Mr Moore’s critique. We rely on these responses to say that Mr. Moore’s criticisms are ill-founded and overblown.

95. Thus, what to Mr. Moore is cacophony and clutter is to Sir David panoptic and episodic.

96. Ultimately, Mr. Moore’s critique is founded upon his belief that the brief for the UKHMLC is fundamentally flawed- essentially the proposition is that if the brief is bad then it doesn’t matter how good the architects are, they can’t help but fail.

97. Sir David was “stunned” by the suggestion that the brief for placing the UKHMLC in VTG was bad. As he explained in his evidence in chief:

³⁴ See e.g. CD 5.14 at paras. 28 - 40

“The very premise of my profession is to find solutions to ever changing typologies and forms. What was exciting was the combination, not just...a memorial to go to in the traditional sense, but also to...experience the learning centre to give you education. People seem to think that is not a benefit. But I don't know a single memorial in the whole world where that happens- where you go through a memorial into a learning centre. It is a profound evolution, a way of memorialising and of understanding education. A memorial and also a gateway to illumination. One that made a lot of sense in the landscape. And that is what good architects do. We rise to that challenge when we see it.”

98. We ask the Inspector and the Minister to prefer the analysis of Professor Tavernor to Mr Moore's.

99. Professor Tavernor sees the UKHMLC as:

“... a complementary addition to the existing VTG memorial thematic of 'humanity versus inhumanity'.”³⁵

100. He says of the proposals (emphasis added):

“**The UKHMLC is a brilliant conception**, a skillful response to the competition brief, which has been developed into a convincing architectural and landscape design resolution. The considerable experience and abilities of the design team, and their ability to work so well together, has resulted in a sensitive design resolution that has made the very best of the site constraints and opportunities. **This will be an extraordinary memorial, which will be regarded as world class**”.³⁶

Heritage:

101. The Inspector and the Minister will be familiar with the statutory, case law and policy presumptions which fall to be applied in reaching a decision where a proposal would affect the heritage interest- the significance- of heritage assets. It

³⁵ Op. cit. 5.3

³⁶ CD 8.11 para. 3.18

goes without saying (but for the record) our case is set within that legal and policy context.

102. Thus, if, as we say is the case here, any harm would be “less than substantial” in the lexicon of the NPPF then if, applying what is said in paragraphs 193, 194 and 196 of the Framework, it is concluded, as we say it should be, that the public benefits of the proposals would outweigh that harm *that conclusion constitutes the “clear and convincing justification”* sought by the Framework.

103. However, there is one point that does need to be discussed (perhaps surprisingly so) and that is how one calibrates harm given the Framework’s references to harm either being “substantial” and “less than substantial.” To put the point shortly, one cannot say (as Robert Ayton does on behalf of the City Council) that the harm while less than substantial would be towards the very high end of the scale of less than substantial “almost equating to substantial harm but not quite”³⁷ unless one correctly understands what in law constitutes “substantial” harm.

104. The law is clear. The High Court held in the case of **Bedford BC v SSCLG**³⁸ that in order to be substantial “*the impact on significance was required to be serious such that very much, if not all, of the significance was drained away. ...One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced.*”

105. Remarkably, no, astonishingly, of the heritage experts called by the main parties, Dr. Miele for the Applicant is the only witness who has applied the law as held in Bedford.

106. All the others have set the bar for “substantial” harm at a lower level than the law sets it.

³⁷ CD 8.37 para. 165

³⁸ CD 7.2 at [24] and [25] The citation is [2012] EWHC 4344 (Admin)

107. This inevitably means that the degree of harm found by all of the witnesses called by our opponents, literally *by definition*, is overstated.

108. Those who have neglected to apply the law seek to rely instead on what is said in the 4th paragraph of the PPG at 18a-018³⁹ which gives as an “example” that: *“in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest.”*

109. The argument appears to run that “substantial” simply means “serious.”

110. Whether what was held in the Bedford case and the example given in the PPG are reconcilable is debatable- Michael Lowndes said in re-examination that they aren't. The passage in the PPG does not explicitly or implicitly set out to reformulate the legal definition of “substantial” as established by the High Court in Bedford *nor could it have*. The only way they can be reconciled is to treat the PPG's reference to “seriously affects” as meaning “seriously” *in the sense of* vitiating altogether or very much reducing significance (as per Bedford). That would take one directly to the law. **But** what is clear, and certainly is our submission, is that one cannot replace the legal definition of “substantial” as set out in Bedford with some less exacting test purportedly derived from the wording of the PPG.

111. With that in mind, we turn to summarise our case on whether harm would be caused by the proposals to heritage assets and if so, to what degree.

112. In the way in which these assessments are done, the change arising from introducing a new structure into two heritage areas (a RPG and a Conservation Area) and the setting of several others is likely to cause at least some “harm” to something because of the metrics utilised **but** we must not forget that in

³⁹ CD 4.13

considering the UKHMLC we are undoubtedly considering what will become in its own right a listed building- Dr Miele considered Grade I- in the future.⁴⁰

113. Also, it is simplistic to necessarily equate changes to views from or to a heritage asset with harm to the significance- the heritage interest- of the asset in question.

114. As a contextual point, adding a memorial and revamping Victoria Tower Gardens would be of a piece with the history of the gardens, the layout of which has changed significantly on a number of occasions over time, and where memorials and sculptures have been located in, and relocated to, and moved from place to place within, the gardens, rather like chess pieces: as we put it to Robert Ayton, these restful gardens have been very restless.

115. The advice of Historic England should be used as a sense-check of our own conclusions and that of others.

116. We will consider the impacts on the key heritage assets first on the basis that all the plane trees would remain and would not be lost nor would their contribution to the scene be tangibly harmed by the proposals, that being our case.

117. **VTG as a Registered Park and Garden:** *Historic England* considers that there would be moderate less than substantial harm; Dr. Miele, *low* less than substantial harm. Dr. Miele considers that the proposals would *also* bring heritage benefits and that these would outweigh the small degree of harm. These are balanced and sensible judgement-calls - *at worst*, middling less than substantial harm. It is absolute nonsense to suggest that the gardens would be de-registered.

118. **The Westminster Abbey & Parliament Square Conservation Area:** given that VTG are part of a very much larger Conservation Area which itself contains buildings and spaces of phenomenal significance, it follows as a matter of

⁴⁰ Dr Miele in chief and in answer to the Inspector

logic that the degree of harm to the Conservation Area as a whole must be less than the degree of harm found to one element within it (VTG). Accordingly, Dr. Miele concluded that there would be some *very limited* less than substantial harm which itself would be counterbalanced by heritage benefits. *Historic England* does not suggest that there would be *any harm at all* to the Conservation Area's significance. These judgements feel right.

119. **The Buxton Memorial, Grade II*:** Dr. Miele concludes that there would be some limited less than substantial harm and that although there would be heritage benefits as well, on “a finely balanced conclusion” overall there would still be some very limited harm (basically, in his book, it's a close call). *Historic England* considers there would be low to moderate less than substantial harm, which it seems sensible to conclude would be the position *at the very worst*.

120. **The Palace of Westminster and Westminster Abbey including St Margaret's Church World Heritage Site:** it is hard to fathom how any sensible, grounded, assessment could conclude that the UKHMLC would cause harm to the Outstanding Universal Value of the WHS. It really doesn't make any sense at all. Dr. Miele referred to an “inconsequential” “scintilla of harm” because views towards Parliament would change with the UKHMLC in the foreground but he concluded that the new, elevated, views which would be created by the proposals just a few metres to the north of the impinged-upon views, and the ability to better appreciate the river setting from the boardwalk, would constitute a countervailing and overall demonstrable *enhancement* to the ability to appreciate the OUV of the WHS. Relying on *Historic England* as our *bellwether*, Mr Dunn confirmed in answer to the Inspector that there would be *no harm* to the WHS.

121. **The Houses of Parliament and Palace of Westminster, Grade I:** very similar points arise as with the WHS, it's the same views (existing and proposed) again, and so Dr. Miele concludes that any low degree of less than substantial harm would be cancelled out by the beneficial effects. *Historic England* does not

suggest that there would be *any harm at all* to the significance of the listed building.

122. Neither we nor Historic England consider that any harm would be caused to the significance of any of the other heritage assets that have been assessed by the parties. It seems ludicrous to suggest that there would be any harm to them at all.

123. Turning to the impacts should some of the plane trees be lost or their contribution to the scene be tangibly harmed: it was only as a result of answers in cross-examination first by Robert Ayton that it became clear that the City Council has in mind *only* the trees on the west side of the gardens between Great Peter Street and Dean Stanley Street being affected, and secondly by Mark Mackworth-Praed that this relates to 10 (of the 51) plane trees. It wasn't at all clear before these answers that that is the full extent of the point.

124. With this in mind, Dr. Miele explained in his evidence in chief that his conclusions concerning the degree of harm would change little if at all in such circumstances. It simply isn't credible to conclude, as Robert Ayton does, that the loss (or tangible harm to) these trees would mean that the degree of harm to the significance of VTG as a RPG, the Conservation Area, the WHS, the Houses of Parliament, the Buxton Memorial, and indeed to the Memorial to Emmeline Pankhurst, and the Burghers of Calais would be *substantial*. Conclusions like these can only have been arrived at by failing to apply the definition of substantial harm stated by the High Court in the *Bedford* case. An easy way of testing the proposition is to ask whether the OUV of the WHS wholly or very much depends on these 10 plane trees such that their loss (or tangible harm to them) would vitiate altogether or very much reduce the heritage significance of the WHS. There is only one conceivable answer to this test question- "no, of course not". This analysis can be repeated for all of the heritage assets in question.

Use of the Gardens:

125. The gardens have a multiplicity of uses and users. Some of our opponents say that the Holocaust Memorial and Learning Centre would make many of these current activities “impossible”. This is simply not credible.

126. But would these uses although not rendered impossible, be notably or markedly harmed by the proposals? The inquiry has heard a huge amount of sincere and heartfelt testimony from local residents and others convinced that there would be very real impacts on their and others’ use of the gardens. It seems to us that much of this arises from fear of change. Here we have to do our best to imagine the gardens of the future *with all the various beneficial changes to them that we propose in place*, with the UKHMLC in place, which would repurpose some 7.5%⁴¹ of the existing gardens (basically, some grass) from publicly freely accessible open space to being available to ticket-holders as, in the main, the Memorial Courtyard. With that in your mind’s eye, is it credible to think that any of the various activities which currently take place- people walking through the gardens, joggers, people sitting in the gardens, people contemplating the memorials and sculptures, children playing, people relaxing, people on their lunchbreak, and so on and so forth- would be constrained in any real sense or at all in this future evolution of the gardens? ***We consider, not at all.***

127. Natasha Kaplinsky OBE struck a sensible chord:

“I see no reason at all why the Memorial and the current uses of the park cannot happily continue to co-exist. I understand that it might be important for some people to sunbathe or to have a picnic in the park, but I find it very hard to hear that this cannot be squeezed into the remaining 93 percent of the park and that it is to be prioritised over the opportunity to juxtapose a monument marking the worst example of the disintegration of democratic values against the greatest emblem of Britain’s aspirations for democracy.”

128. Which brings us to *a very important point* indeed. There would be more, and at times many more, people in the gardens but let us not forget ***why*** they would be there.

⁴¹ When the temporary permission for the Parliamentary Education Centre expires and the area occupied by it is returned to the Gardens, VTG will become a little larger and the percentage “loss” a tad smaller.

Trees:

129. The gardens are enclosed by two rows of London planes. 25 to the east and 26 to the west.

130. No one has contended that our proposals *would* cause the death of any of these magnificent trees.

131. For our part, we are confident that enough is known about the trees and about how to carry out works of the nature that we propose, together with mitigatory and compensatory measures, so that the works would not cause their death.

132. Time was spent discussing the role of BS 5837⁴² Root Protection Areas [RPAs] but this doesn't really take us anywhere. Mark Mackworth-Praed sets great store by RPAs but Dr. Hope, on this point supported by Jeremy Barrell, sees things differently. There are two key points: (1) drawing a circle on a plan round a tree simply cannot tell us more about the presence and dimensions of tree roots than non-invasive and invasive on-site investigations, as have taken place here, and (2) works within RPAs do not mean that the trees in question will be harmed let alone fatally as can be seen in this case from (a) Mr. Barrell's enthusiastic confirmation in cross-examination that works within RPAs are commonplace, and (b) his acceptance and Mr. Mackworth-Praed's as well, that all the works (other than the secant piling) which would take place *within the RPAs* provided properly carried out would not harm the trees.

133. One would never have known from reading the barrage of points made in Mr. Mackworth-Praed's evidence that there is a single point in issue between the parties. The testing of evidence in cross-examination paid dividends as Mr.

⁴² CD 4.16

Mackworth-Praed confirmed, as just noted, that all the proposed works *other than the secant piling* provided properly carried out would not harm the trees. This, as he confirmed, narrows the issue down to the impact of the secant piling on 10 plane trees on the western side of the gardens only. Mr Barrell agreed with this in cross-examination.

134. The 10 plane trees in question are numbered 71011 to 71020 inclusive.

135. The competing views among the arboricultural experts about how precisely the RPAs for these (and the other western) trees should be plotted, and in particular whether roots are present or absent under the carriageway of Millbank, is a red herring. Similarly, the competing views about how deep plane trees root is also a distraction. It doesn't matter who is right or wrong about these issues for the simple reason that however one plots the RPAs and however shallow or deep the roots cannot make any difference at all *to the actual distance between the proposed secant piling and the 10 trees in question, and the dimensions of the roots that would be encountered at these distances.*

136. The distances concerned were given by Dr Hope in his evidence in chief as:

71011	14.6 m
71012	12.4 m
71013	12 m
71014	10.5 m
71015	9.7 m
71016	9 m
71017	9.2 m
71018	8.75 m
71019	8.3 m
71020	9.6 m

137. As Dr. Hope explained in his evidence in chief and confirmed in re-examination, research by Dr. Dobson⁴³ and Dr. Biddle⁴⁴ demonstrates that beyond 3 metres, roots taper to being very small, and at the distances in question here (from 8.3 metres to 14.6 metres) any roots which would be severed by the secant piling would be tiny. As Dr. Hope confirmed in re-examination, roots of these dimensions would not (in the language of para. 7.2.3 of BS 5837⁴⁵) “*be essential to the tree’s health and stability.*” He confirmed that they could be severed without harming the health or longevity of the trees.

138. The trees in question are, with a small caveat, healthy. The Tree Health & Vitality Diagnostic Assessment⁴⁶ assessed 9 of these 10 trees and on a methodological 7 step scale⁴⁷ of 0 to 6 (in which 0, 1, 2, 3 = healthy) found all but one of them to be healthy. **Remembering that “0” = the best end of the scale and “6” = the worst end of the scale:**

71011	0
71012	4
71013	1
71014	0
71015	0
71016	0
71017	1
71018	1
71019	0

139. Tree 71012 is category 4 that is “reduced vitality”. Of the 10 trees in question, it is the second farthest away from the secant piling (at 12.4 metres). As the Tree Health & Vitality Diagnostic Assessment concludes (in line with all the arboricultural assessments submitted as part of the application) the trees would be:

⁴³ CD 8.16 Appendix B [page 81] para 4

⁴⁴ CD 11.10 page 30 left-hand column bottom para.

⁴⁵ CD 4.16 page 24

⁴⁶ CD 11.2 see page 5

⁴⁷ CD 11.3

“...resilient to the impacts of [the] proposed development.”⁴⁸

And:

“Proposed within the Arboricultural Impact Assessment which accompanied the planning application, a proactive programme of tree and soil health care will help ensure that all the London Plane trees are in “peak” health prior to any approved development. A reactive programme of tree health care identified for both during and after [the] approved development has also been proposed, to address root pruning and any other potential causes of physiological stress and tree health, to maintain current tree health.”⁴⁹

Security:

140. As Matthew Brittle observed, there are no guarantees against terrorism or extremist activity, and designers design to achieve a balance between the intended use of a site and the safety and security that make the use of the site viable in an everyday context. He explained that for the UKHMLC, the potential security risks were assessed along with the likelihood of these events occurring, and proportional and appropriate mitigations and management procedures were then designed in. A full set of security design information was submitted to Westminster City Council as part of the planning process, though for obvious reasons was not included in the public part of the planning information.

141. It is not possible to remove *all* the risk from terrorism to the Memorial and Learning Centre, be it sited in any location, without enforcing a ‘fortress’ mentality that is likely disproportionate to the threat. However, Mr. Brittle was clear that siting the Memorial and Learning Centre adjacent to the Palace of Westminster is unlikely to cause *any determinable increase* in threat for the area

⁴⁸ CD 11.2 page 7 last para.

⁴⁹ CD 11.2 page 7 section 3 last para.

above what is *already present*. The threat to the users of VTG and the Memorial and Learning Centre is not over and above the *same* threat level that will exist in other crowded spaces within London.

142. Throughout the design process the Applicant has liaised with the Metropolitan Police Service, the Centre for the Protection of National Infrastructure and the Community Security Trust, who are a charity that completes varied activities to protect British Jews. All parties have had access to the security development information, and have made no objections to the level of security that will be applied at the Memorial and Learning Centre.

143. As David Cooper said: “It is much better here where there is already massive security.”

144. Rudi Leavor reflected upon the fact that a terrorist threat can never be denied:

“We face this with every synagogue we try to build. But not to build the memorial simply for this reason would mean the terrorists would have won without having to lift a finger.”

Protection against flooding:

145. None of the responsible authorities and agencies have objected to the proposals.

146. A sensible view must be taken of the likelihood of the risk. Before starting to formulate one’s very own disaster movie in one’s head, it is helpful to look at the factors which would actually have to coalesce at the same time in order for one of the only two credible breach scenarios, as set out in Charlotte Nunns’ rebuttal proof⁵⁰ to occur. For the wall to fail due to high water levels in the Thames would

⁵⁰ CD 9.7 at 1.22 – 1.28

also require a structural instability in the wall causing it to collapse. However, a water level that high would already have caused the Thames barrier to be closed, and flood warnings or alerts would have been given. Further the condition of the wall is better even than required, and sufficient to protect the existing urban area including the Houses of Parliament and buildings in the vicinity. The likelihood of the wall failing, right at the location adjacent to the learning centre, is *extremely* low. Similarly, a breach caused by a collision with the wall right adjacent to the Memorial would also have to coincide with high water levels, to which the same points apply. If there were somehow to be a breach, it would not be just the immediate site, but indeed large parts of Central London which would be under water.

147. A sense of perspective needs to be retained in looking at these matters.

Transport and pedestrian movement:

148. None of the responsible authorities or agencies have objected to the proposals.

149. As a contextual point one needs to remember that the site falls within the Core Central Activities Zone which is where WCC's City Plan encourages uses of international and national significance to locate⁵¹ and so it is pretty incoherent to object, as a number of the R6 and interested parties do, on the basis that lots of people would visit the proposed UKHMLC; objecting on the basis that lots of people would walk to and from the site seems especially odd given that policy at every level encourages just that.

150. As was explained during the roundtable session, the peak impact of the development "misses all of the peaks". Mr. Little and Mr. Andrews were able to confirm that in relation to the 'Gate 1' potential "pinch-point", this has been tested on the basis of the maximum predicted number of visitors- the 'worst case

⁵¹ CD 2.3 page 117 Policy S27

scenario’- which would occur only for a short time on some days in the entire year.

151. There are no “showstoppers” in any of these points.

152. It may be that TfL have - we say, entirely opportunistically - sought to make their support for the scheme contingent on a contribution to funding for a project at Lambeth Bridge which they have been planning to carry out anyway since 2012. As explained in the separate note submitted to the inquiry, the contribution sought by TfL in any event fails to meet the tests set out in CIL Regulation 122. Fundamentally, it cannot be said that the proposals would only be acceptable if £1m is contributed towards these works. The sum requested has no known basis, as Ms Seiler (TfL) said: *“As for the sum of £1 million we don’t have a calculation for this.”*

Archaeology:

153. The inquiry was ably assisted by Alan Ford, and there are no points of controversy here.

Public benefits and the planning balance:

154. Ultimately, applying all relevant statutory requirements, the issue is whether any harm that the proposals would cause in terms of heritage and to any other interests are outweighed by the public benefits of the proposals.

155. Applying s.38(6) of the 2004 Act it is our case, as explained by Chris Goddard, (a) that although there are some instances in which the proposals do not accord with development plans policies, reading the plan as one must *as a whole* the determination which would be in accordance with the plan would be to grant

planning permission, and (b) that material considerations- primarily the national and international scale public benefits of the proposals- do *not* indicate otherwise.

156. Our alternative case is that (a) *if* it is concluded that the determination which would be in accordance with the development plan would be to refuse planning permission, then (b) material considerations- primarily the national and international scale public benefits of the proposals- *readily* indicate otherwise.

157. Similar points arise in relation to the balance which is required to be struck applying NPPF 196. It is our case that any less than substantial harm to heritage assets (whatever the degree of that harm) would be *readily* outweighed by the public benefits of the proposals.

158. Our alternative case, in the to our minds inconceivable eventuality that it is concluded that *substantial* harm would be caused to heritage assets is that, applying NPPF 195, that harm would be outweighed by the public benefits of the proposals- the harm being “necessary” to achieve those benefits.

159. Efforts have been made to seek to downplay the public benefits of the proposals but it is worth recalling that David Dorward accepted in cross-examination that the UKHMLC would be a substantial benefit to the nation and globally, of national and international significance and that it followed that **the public benefits would be of national and international significance.** *He was right to do so.* Just as he was right to accept that if the proposals would cause harm to the use of the gardens, this would register at the lower, *local*, scale.

160. Opponents have argued that the weight to be given to the public benefits should be reduced because, so it is said, they could be achieved somewhere else or that some of them could be provided regardless of the UKHMLC. The plain fact of the matter however is that *there is no evidence at all* that any of the public benefits would be provided in the event that permission is refused for the UKHMLC.

161. In any event, as is clearly expressed in NPPF 196 (with emphasis added)

*“Where **a development proposal** will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits **of the proposal**...”*

162. Thus making the simple and obvious point that there must be a weighing of the pros and cons *of the proposal*.

163. This is especially pertinent in this case in which *what makes this location so special makes it so well suited for the proposed UKHMLC*.

164. It is **overwhelmingly** in the greater public interest to allow the UKHMLC to proceed.

To close:

165. As Professor Foster said:

“...if we believe as a society that learning about and commemorating the Holocaust is profoundly significant, then it follows that the Memorial and Learning Centre should be in a place of immense national and international importance. Thus, locating it in London- the nation’s capital city- and directly adjacent to the iconic Houses of Parliament, has **an irresistible appeal**. Indeed, if the Memorial and Learning Centre is not placed in such a prominent location it will severely diminish its impact and reach and, inevitably, raise questions about Britain’s commitment to educate about the Holocaust and to memorialise its victims.”

166. And Ellie Olmer:

“When it’s built it will be a central, beacon of hope, of living history, a reminder to those that need reminding in the face of obscene revisionists,

deniers and conspiracy theorists. Its compelling voice will be one of education and of action. We have to be informed and active participants in countering hate in today's world.

What if we don't build it? History and future generations will never forgive us as we face the moral implications of our government's inaction then and now. ...

Why would we want to build it? How could we afford not to?"

167. This is not a time for fatalism or pessimism, or for keeping ourselves small. It is not a time to be grudging, or narrow, or to think only of one's own life. It is a time for optimism and a time to act. A time to honour, commemorate and grieve those lost, and to educate, inspire and nurture those still to come. **To build the right thing right at the centre of things to show its central importance.**

168. In the best tradition, this inquiry has welcomed many different voices over its five-week course. The subject matter of this application could not be more important or more serious. Whilst it ultimately does remain a land use planning matter, there is nothing more noble nor more sacred to plan for than this. To meet the memory of state-sponsored evil with hope.

Final words:

169. We hope that you will recommend that the UKHMLC be allowed to proceed.

170. In the hope that you will do so, imagine visiting the gardens in a few years' time: the gardens will look the most beautiful they ever have, and set within the gardens you will see the UKHMLC. As you see and touch the Memorial and descend into the Learning Centre, your emotions will be yours and yours alone. Think back to Autumn 2020 and the words spoken to you then by a remarkable young man, Dov Forman:

“With education comes remembrance - this memorial will give people somewhere to remember and reflect. When we no longer have survivors like [my great-grandma] Lily among us, this memorial will help to ensure that their experiences are never forgotten. We can create the next generation of witnesses.”

171. And that is what *you* would have played a profound role in achieving.

Christopher Katkowski QC

Kate Olley

13th November 2020