

**DRAFT STATEMENT OF COMMON GROUND ADDRESSING ARBORICULTURAL MATTERS**

LOCAL PLANNING AUTHORITY REFERENCE: 19/00114/FULL

PLANNING INSPECTORATE REFERENCE: APP/XF990/V/19/3240661

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**SECTION 77 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

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**CALL IN INQUIRY INTO THE PROPOSED DEVELOPMENT OF THE UNITED KINGDOM  
HOLOCAUST MEMORIAL AND LEARNING CENTRE LOCATED WITHIN VICTORIA TOWER  
GARDENS, MILLBANK, LONDON, SW1P 3YB**

APPLICANT: SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT

LOCAL PLANNING AUTHORITY: WESTMINSTER CITY COUNCIL

**DATED 5<sup>th</sup> OCTOBER 2020**

## **INTRODUCTION**

This draft Statement of Common Ground ("SoCG") on Trees has been prepared in relation to an application (the "**Application**") by the Secretary of State for Housing, Communities and Local Government (the "**Applicant**") for the installation of the United Kingdom Holocaust Memorial and Learning Centre ("UKHMLC") within Victoria Tower Gardens, Millbank, London ("**VTG**").

The proposal for the UKHMLC (the "**Proposed Development**") is described at para. 1.2 of the main SoCG.

This Statement, which is supplemental to the main SoCG, addresses the following areas:

Description of the Trees within VTG

The Proposed Development

Legislation and Development Plan

Matters agreed between the parties

Matters not agreed between the parties

## **DESCRIPTION OF THE TREES WITHIN VICTORIA TOWER GARDENS**

- 1.1 There are a total of sixty trees within VTG, fifty-one of which are London Plane trees. These are growing at regular spacings in two rows, along the eastern and western boundaries of VTG. and forming its principal arboricultural feature. The eastern row comprises twenty-five trees, and the western row twenty-six trees. With the exception of one semi-mature specimen towards the northern end of the western row, all the London Planes are mature trees. The remaining nine trees comprise five Cherry trees; and one each of Oak, Ash, Alder and Crab Apple. All these are semi-mature, with the exception of one Cherry, which is mature.
- 1.2 Forty-seven of the London Planes are within the application site area (as defined by the red line on the application plan UKHM-AA-XX-ZZ-DR-A-03-002) ("the Site"). The canopy spread of one further London Plane (tree 70021, on the east side of VTG) overlaps with the Site boundary. Of the other nine trees, four stand within the Site boundary, and five outside it, in the northernmost part of VTG.
- 1.3 The mature London Planes are large trees, of average heights of around 29-30m. They date from plantings in the 1890s and early 1900s, and are therefore estimated to be in the region of 120-130 years old. London Plane is considered to have a biological life expectancy, under typical conditions in parks and gardens in lowland Britain, in the range of 250 to 350 years. Therefore the trees can expect to have up to approximately 125 to 225 years of remaining life.
- 1.4 The majority of the trees (47 out of 60) are categorised, according to the system set out in British Standard BS 5837: 2012, Trees in relation to design, demolition and construction – Recommendations ("BS 5837"), as category "A" trees, with 8 being category "B", and five category "C". Of the 51 London Planes, 46 are assessed as category "A", and five as category "B". Category "A" is assigned to trees assessed as being of high quality with an estimated remaining life expectancy of at least 40 years. Category "B" is assigned to trees assessed as being of moderate quality with an estimated remaining life expectancy of at least 20 years, whilst category "C" is assigned to trees assessed as being of low quality, with an estimated remaining life expectancy of at least ten years.
- 1.5 The Site is located within the Westminster Abbey and Parliament Square Conservation Area. All the trees within VTG are therefore afforded protected status by virtue of their location in the Conservation Area.

- 1.6 Management of the trees is the responsibility of The Royal Parks. The Royal Parks undertakes a programme of regular inspections of the trees, and carries out management works to them both pro-actively, and reactively when necessary. The trees are therefore under active and responsible arboricultural management.

## **PROPOSED DEVELOPMENT**

- 1.7 The main Statement of Common Ground sets out the agreed description of the Proposed Development in detail.
- 1.8 None of the mature London Plane trees are proposed to be removed as part of the Proposed Development, or in order to implement the Proposed Development.
- 1.9 The Applicant proposes to remove two of the smaller (non-London plane) trees. The proposed removals are not identified or assessed within the tree reports submitted with the planning application. However, it is agreed that, in the event of the UKHMLC being permitted, suitable replacement trees could be established within the wider Victoria Tower Gardens, to be secured by a tree replacement condition and a S.106 agreement with the Royal Parks as owners of the land.

## **LEGISLATION AND DEVELOPMENT PLAN**

- 1.10 The following matters are agreed between the parties in respect of relevant legislation and the Development Plan.
- 1.11 Section 197 of the Town & Country Planning Act 1990 imposes a duty on Local Planning Authorities to ensure, whenever it is appropriate, that in granting planning permission for any development, adequate provision is made, by the imposition of conditions, for the preservation of trees. Sections 198 to 214 of the Act, and the Town & Country Planning (Tree Preservation) (England) Regulations 2012, together set out the statutory framework for protection of trees within England.
- 1.12 The Development Plan policies are relevant to the determination of the Application, including those which relate to trees and tree protection within the Westminster City Council (“WCC”) area, are listed in the main SoCG.

- 1.13 BS 5837 is the industry standard, and nationally accepted, document for providing guidance and recommendations in relation to the juxtaposition of trees and buildings. Although not a statutory document, BS 5837 should form the basis for the assessment of trees on proposed development sites and all arboricultural impact assessments relating to development. Under the introductory heading ‘Use of this document’ on page iii, it states: “*This British Standard takes the form of guidance and recommendations. It should not be quoted as if it were a specification and particular care should be taken to ensure that claims of compliance are not misleading.*”

## MATTERS AGREED BETWEEN THE PARTIES

### **Application documents**

- 1.14 The drawings and documents submitted with the Application (as part of the original Application submission and as supplemented through further submitted documents) are those to which any grant of planning permission will relate. The agreed drawings of the Proposed Development are listed at Appendix A to the main SoCG.

### **Tree dimensions and condition**

- 1.15 The mature London Plane trees within VTG all appear healthy and have considerable life expectancy, as identified in their grading at the highest categories of Category A and Category B. None of the mature London Plane trees in VTG currently exhibit any outward signs of physiological stress or decline in health.
- 1.16 The periodic removal of deadwood, or of branches identified as infected by Massaria disease, by The Royal Parks for safety reasons is good arboricultural practice and is not detrimental to the visual amenities of the area. To date, this has not had an adverse effect on the significance of nearby heritage assets or on the character of the conservation area.

### **BS 5837**

- 1.17 BS 5837 paragraph 3.7 defines the root protection area (‘RPA’) as the “layout design tool indicating the minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain the tree’s viability, and where the protection of roots and soil structure is treated as a priority”.
- 1.18 The extent of a tree’s RPA is calculated by the formula prescribed in para. 4.6.1 of BS 5837, and is based on an area equivalent to that of a circle of a radius twelve times the tree’s trunk diameter measured at a height of 1.5 metres above ground level. BS 5837 however caps the

extent of RPAs at an area of 707m<sup>2</sup>, equivalent to a circle of a radius of 15m. This limit applies to any tree of 1250mm trunk diameter or greater.

- 1.19 Paras. 4.6.2 and 4.6.3 of BS 5837 set out how the RPA should be modified to take account of pre-existing site conditions and other factors which indicate that rooting has occurred asymmetrically, to produce a polygon of an equivalent area to that of the circular area initially plotted, whilst still providing adequate protection for the root system, as per the BS wording
- the morphology and disposition of the roots, when influenced by past or existing site conditions (e.g. the presence of roads, structures and underground apparatus);
  - topography and drainage;
  - the soil type and structure;
  - the likely tolerance of the tree to root disturbance or damage, based on factors such as species, age, condition and past management.

### **Impacts of development on trees**

- 1.20 Inappropriately planned or designed developments, and/or incorrectly planned or performed site construction operations, may cause harm to, or loss of, trees in respect of any development.
- 1.21 The adverse effects of inappropriate construction operations and development can manifest themselves rapidly or can take many years to become apparent.
- 1.22 Some tree species, including London Plane, are considered to be naturally more tolerant of development impacts than others.

### **The Site**

- 1.23 The southern area of the Site was subject to remodelling and re-landscaping in 2014, with the relocation of the Spicer Memorial to its current location, and the installation of a new playground.

### **MATTERS NOT IN AGREEMENT BETWEEN THE PARTIES**

- 1.24 Whilst all parties agree that polygons are an acceptable means of depicting RPAs where site conditions indicate that circular RPAs centred on a tree's trunk are not appropriate, the extent,

manner of depiction and dispositions of the RPAs of the London Planes in the present case are not agreed.

- 1.25 WCC is of the opinion that in relation to the tree numbering, dimensions, physiological health, structural condition, landscape value, estimated remaining life expectancy and categories of all the trees within VTG , Mr Mackworth-Praed's report of March 2020, which incorporates an updated tree survey undertaken by David Archer Associates in February 2020, is the appropriate basis for assessment of the impacts of the Proposed Development, i.e. that the updated survey data should supersede the February 2018 survey data in the report produced by Bartlett Tree Experts, which was submitted as part of the planning application. Dr Hope disagrees on this subject. He considers that the measurements and assessments relied on by Mr Mackworth-Praed are inaccurate, and misleading. He considers the Bartlett report should take precedence.
- 1.26 Mr Mackworth-Praed suggests that there may be a difference in the rate of trunk incremental growth between those on the west side of VTG and those on the east side. Dr Hope disagrees with this suggestion, as he maintains that the diameter measurements of the tree trunks are not accurate, nor that they are statistically significant. Dr Hope considers that the figures reported by Mr Mackworth-Praed are meaningless.
- 1.27 There is disagreement relating to the interpretation of item 4.3 of BS 5837. While we agree that item 4.3 of BS 5837 refers to soil assessments, Mr Mackworth-Praed considers that the British Standard makes no recommendations for root investigations, whereas Dr Hope disagrees. He cites BS 5837 Item 4.3 “Soil Assessment” which states:
- “4.3.1 A soil assessment should be undertaken by a competent person to inform any decisions relating to:*
- *the root protection area (RPA);*
  - *tree protection*
  - *new planting design; and*
  - *foundation design to take into account of retained, removed and new trees.*
- 1.28 Mr Mackworth-Praed considers that a “soil assessment” is not the same as a “root investigation”, and that this paragraph of BS 5837 therefore gives no support to the use of root investigations in the form of trial trenches.
- 1.29 Mr Mackworth-Praed considers that as BS 5837 does not recommend root investigations, it makes no recommendation for equipment to be used in the context of such investigations. Dr

Hope cites item 7.2.1 of BS 5837 where, he maintains, the use of compressed air soil displacement (Air-Spading) is recommended to excavate trenches through areas containing extensive roots. Mr Mackworth-Praed notes that this paragraph is under the heading "7.2 Avoiding physical damage to the roots during demolition or construction", and therefore considers it does not relate to root investigations. Dr Hope considers Mr Mackworth-Praed's assertion is untenable, as the whole of BS 5837 relates to protecting trees during demolition and construction. Dr Hope cites the title of BS 5837 where it states: "Trees in relation to design, demolition and construction – Recommendations".

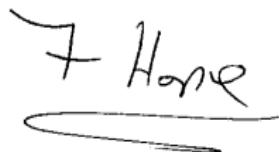
- 1.30 There is disagreement in relation to mature trees being capable of withstanding the effects or impacts of construction operations (be these short- or long-term effects) than younger trees.
- 1.31 In Dr Hope's opinion, there are no indications that the planes on the VTG site would be less capable of withstanding inappropriate operations compared to younger trees in a similar position.
- 1.32 Dr Hope acknowledges that mature trees, in poor condition, may not be capable of withstanding development impacts or inappropriate construction operations as well as younger, healthy trees, although just because a tree is young, does not necessarily mean that it will be capable of withstanding development impacts or poor construction operations. The planes on the VTG site are all healthy, with long life expectancies. They are exhibiting no signs of deterioration, and are making acceptable new growth. Planes can withstand severe pruning, even when mature, and make rapid, extension growth. They are fully capable of being pollarded, i.e. having all their branches removed, which some species, even young examples, cannot.
- 1.33 Mr Mackworth-Praed considers that the reduced capability of mature trees to tolerate damage to their root systems, rooting environments or other environmental changes resulting from development and construction impacts is well established, and is specifically reflected and referred to at para. A.2.2 of BS 5837. London Plane's tolerance of severe crown pruning or pollarding does not mean that mature trees of the species can be assumed to be capable of withstanding, or recovering from, excessive root severance, or root damage arising from construction-related operations.
- 1.34 The extent of encroachment of the main scheme elements into the RPAs of the London Planes, and the likely consequences of these encroachments and associated working spaces required around them for the relevant trees' health and prospects, in terms of the numbers or sizes of

roots which will be severed, and of the long term effects of the structure's installation, are not agreed.

- 1.35 The likely effects of ancillary scheme features, including service routes, Hostile Vehicle Mitigation ("HVM"), relocation of the Spicer Memorial, and mounding, either considered in isolation or in combination with other elements or features, are not agreed.
- 1.36 The assessment of impacts on the branch canopies of trees as a result of piling for the basement of the UKHMLC is not agreed, in the absence of it being demonstrated that the use of the "Martello Technique" presented by the applicants can be satisfactorily deployed for its construction, in view of the required depth and robustness of the secant piling required.
- 1.37 WCC does not consider that canopy impacts on trees on the east side of VTG have been correctly or fully assessed in the context of the temporary use of a construction access strip on this side of VTG as is currently proposed. The applicant states that this would be further assessed pre-construction through the production of an arboricultural method statement ('AMS'), but does not believe that there is currently any potential impact on the canopies on the eastern side.
- 1.38 It is not agreed that the assessment of the effects of the temporary site set-up and operation during the construction period presented by the applicants represents an adequate or satisfactory assessment.
- 1.39 As a consequence of the above areas of disagreement, it is also not agreed that the proposed programme of tree health care as part of the carrying out of the Proposed Development is sufficient to mitigate the potential impacts on tree health arising from tree root pruning and/or other impacts.
- 1.40 Likewise, it is not agreed that the improvement works including the replacement of existing, impermeable concrete and tarmac with permeable materials and de-compaction of the soils, would be sufficient to improve the overall rooting environment, including water, nutrient and oxygen availability for the tree root systems, to an extent which would mitigate the likely impacts of the Proposed Development.
- 1.41 It is not agreed that the AIA and other arboricultural documentation submitted as part of the Application are adequate or sufficient in their level of detail to demonstrate that the potential impacts on the London Planes by the Proposed Development would not be likely to result in harm to them, potentially leading to the loss of trees and/or adverse impacts on their long-term prospects. It is therefore not agreed that these matters can be satisfactorily addressed or

assured by means of an arboricultural method statement to be submitted pursuant to a condition or conditions on a grant of planning permission.

**Signed on behalf of the Applicant:**



Dr. Frank Hope



Donncha O Shea, Gustafson Porter + Bowman

**Signed on behalf of Westminster City Council:**



Mr Mark Mackworth-Praed



Barbara Milne, City of Westminster

Signed on behalf of the Rule 6 Parties



Mr Jeremy Barrell