



Victoria Palace Theatre
Town Planning Proof
Proposed Victoria Station Upgrade



Contents

- Personal details – Jeremy Edge
- 1.0 Introduction and Scope of Evidence
- 2.0 Description of the Local Area
- 3.0 Description and History of the Victoria Palace Theatre
- 4.0 Site History
- 5.0 Relevant Planning History
- 6.0 Use of VPT as a theatre
- 7.0 LUL's Original, Revised Proposals and Proposed Protective Measures to Listed Buildings
- 8.0 Planning policy relevant to the VSU proposals
- 9.0 The issues to be considered in a town planning policy context in relation to the VSU proposals on Victoria Palace Theatre
- 10.0 The Impact of the VSU proposals on VPT
 - a) the effect on the fabric of the listed building through demolition, redevelopment of adjoining land;
 - b) the effect on the listed building due to the physical works in terms of noise and vibration not only during the currency of the works, but subsequently;
 - c) The benefits to VPT of the wider Victoria Interchange works (VTI2) but the consequences due to the VSU on VPT's own proposals;
 - d) the adequacy of the proposed protective measures and their likely effect on the listed building during the construction period;
 - e) the impact on the setting of Victoria Palace Theatre (VPT) as a listed building;
 - f) the likely economic consequences of the VSU on VPT
 - g) summary of policy compliance of the current LUL proposals;
- 11.0 Alternative, or other schemes to the LUL proposals
- 12.0 Whether there is a compelling case for the grant of statutory powers



Appendices

- Appendix 1 Photographs of the environs of the Victoria Palace Theatre
- Appendix 2 Photographs of the locality near Victoria Palace Theatre
- Appendix 3 Victoria Palace Theatre application, plans and supporting statements in relation to the new fly tower
- Appendix 4 3D Aerial view of the revised VSU proposals prepared by LUL
- Appendix 5 Site Plan - Victoria Palace Theatre
- Appendix 6 Consolidated London Plan Map 5B.1 North London sub-region: source GLA.
- Appendix 7 Victoria Area Planning Brief, SW1, adopted April 2006; Westminster City Council. Map 6, (Landmark Buildings).
- Appendix 8 Victoria Area Planning Brief, SW1, adopted April 2006; Westminster City Council. Figure 3, General Guidelines on Height.
- Appendix 9 Victoria Area Planning Brief, SW1, adopted April 2006; Westminster City Council. Figure 10, "generic" plan.
- Appendix 10 Joint letter – Land Securities and Victoria Palace Theatre to Westminster City Council, 13th October 2008

**JEREMY JOHN EDGE will say:**

- 1) I am Jeremy Edge, Partner and Head of Planning at Knight Frank LLP. My experience relevant to this inquiry is summarised as follows:
- 2) I have an Honours degree in Geography and subsidiary Economics from the University of Bristol. I am a Fellow of the Royal Institution of Chartered Surveyors, and am a Member of the Royal Town Planning Institute. I have over 29 years post qualification experience in town planning and property matters. I have extensive knowledge of town planning policy in London and the City of Westminster in particular as I and my firm frequently acts for the City Council in relation to planning and development matters throughout the City of Westminster.
- 3) I am familiar with the background to the Works Order including the scheme for Victoria Station Upgrade, and the associated environmental statement, revised environmental statement and the planning application for listed building consent for the protective works, the subject to this appeal and earlier proposals. I am also familiar with the site location, the surrounding area and the town planning policies relating to development proposals in this part of Westminster contained within the City Council's Unitary Development Plan (UDP), relevant policies within the London Plan and national policies relating to conservation and heritage assets in PPG 15.
- 4) My attendance at this inquiry is to assist the Secretary of State by explaining the acute need for adequate protection to be provided to the Victoria Palace Theatre, which has not been provided in the proposals advanced by London Underground. My evidence examines the proposals in respect of Victoria Palace Theatre and concludes that significant harm, in planning terms would occur to the theatre, a prominent and Grade II Listed Building, if these proposals were to be allowed. My evidence should also be read in conjunction with the evidence of Mr Earl in relation to the assessment of the heritage asset and the likely harm that would be caused to the theatre were these proposal to be allowed and furthermore in relation to the associated architectural, engineering and technical assessments provided by Mr Satow, Mr Greer, Mr Speirs, Dr Loveday and Mr Wilson.



1.00 Introduction and Scope of Evidence

1.01 The purpose of this proof is to examine the planning credentials of the proposal contained within the London Underground (Victoria Station) Upgrade Order and the associated making of a Direction that planning permission is deemed to have been granted for the development contained within the proposed Order. In addition, I also consider the related application for listed building consent made by London Underground under section 10 for Listed Building Consent for:

- 1) Protective works to VPT including monitoring as part of the Victoria Station Upgrade (VSU) works; and
- 2) make good following the demolition of buildings that abut VPT.

1.02 I consider that:

- 1) Inadequate protection for the Victoria Palace Theatre, (VPT), a grade II listed building has been offered;
- 2) The proposals are contrary to National, Sub-regional and Westminster City Council's adopted planning policies; and
- 3) The Environmental Statement (ES) submitted with the proposals in November 2007 and the revised or Supplemental Environmental Statement (SES) dated May 2008 are also inadequate.
- 4) The proposed protective works contained within the application for Listed Building Consent is also inadequate to protect the heritage asset comprising VPT and its setting.



2.00 Description of the Local Area

- 2.01 Victoria Palace Theatre is situated within a transitional area between the conservation areas of Belgravia, Grosvenor Gardens, Royal Parks and Westminster Cathedral. In addition, the local area is characterised by the retail and office uses in Victoria Street and the transport termini at Victoria Station and its environs. Photographs of the environs of the Victoria Palace Theatre are provided in Appendix 1, to assist in appreciating and understanding its character.
- 2.02 To the immediate south of the Theatre are predominately transport related uses located at and in front of Victoria railway station. This is a major transport interchange which includes, in addition to the rail terminus, London Underground stations serving the Victoria Line, Circle and District lines, nearby coach and bus stations. It is the second busiest railway terminus in London after Waterloo.
- 2.03 The conservation areas of Belgravia and Grosvenor Gardens are located to the west of Victoria Palace Theatre. Belgravia is a historic conservation area with predominantly residential character dating back to the 1820's. It was first designated in 1968, and extended in 1977 and 1981. It remains predominantly residential in character with a high degree of townscape uniformity and formality. There are some shops on the edges of the area and a significant number of embassies, diplomatic buildings and institutional headquarters within it. The grander areas are characterised by long stucco terraces of uniform mass, height and architectural treatment. Shorter entrance streets consist mainly of brick houses with half stucco. Variety in townscape can be found in the entrances to the terraces and the mews. To the south, centred on Bloomfield terrace, there is a small area of simple linked villa-type houses and small scale terraced houses of the late 18th and early 19th century.
- 2.04 Grosvenor Gardens was designated a Conservation Area in 1969. The area was set out in the 1860's and comprises tall, grand 19th century terraces, flamboyantly detailed in Renaissance style. There are three small mews at the rear of the terraces. Between the terraces are two triangular gardens containing mature trees, which help to soften views and provide an attractive setting and green foil to the buildings. Victoria Square was developed a calm residential enclave of stucco terraces, smaller in scale and with a quite different character to Grosvenor Gardens. There are a variety of land uses including offices, residential and public open space within the conservation area, which is bounded by busy traffic roads of Lower Grosvenor Place and Buckingham Palace Road.
- 2.05 To the north of the Grosvenor Square conservation area, the Royal Parks conservation area starts at the Royal Mews, and leads northwards to Buckingham Palace and it's gardens then onwards to the major London parks.



- 2.06 To the north and east of the theatre are predominately mixed commercial uses. Victoria Street is a major shopping and office area which is being progressively redeveloped, the first stage of which is the Cardinal Place development by Land Securities. Bounded by Bressenden Place, Buckingham Palace Road, Palace Street and Victoria Street, Cardinal Place provides a new mixed use retail and office development. Offices beyond Cardinal Place are mainly occupied by government, oil and gas and telecommunication industries.
- 2.07 To the south-east of VPT, south of Victoria Street, is Westminster Cathedral and its associated Conservation Area. The Cathedral is built in a Byzantine style of red brick with Portland stone bands and dressings with its campanile rising to approximately 284 feet. Surrounding it are fairly uniform red-brick mansion blocks which were constructed in the 1890's and early 20th century. They are among the earliest block of flats to be built in London. Other surrounding properties include warehouse style red-brick buildings in commercial use including a Post Office sorting office. There is also a modern office and retail development along the south side of Victoria Street. The conservation area is however principally residential.
- 2.08 The area is traversed by major roads including Victoria Street, Buckingham Palace Road, Vauxhall Bridge Road, Grosvenor Place and the roads that make up the Victoria gyratory such as Bressenden Place, Lower Grosvenor Place, Grosvenor Gardens, Bridge Place and Wilton Road.
- 2.09 Victoria Palace Theatre is situated in an area of land use transition, north of the surface level transport hub at Victoria and between the principally residential conservation areas and the commercial area fronting Victoria Street to the east.



3.00 Description and History of the Victoria Palace Theatre

- 3.01 The Victoria Palace Theatre is situated on the north side of Victoria Street opposite Victoria Station as shown edged red on the Site Plan (Appendix 5) (Ordnance Survey extract, scale 1:1250). The site area extends to approximately 0.1397 ha. The frontage to Victoria St is approximately 22.76 metres. Service access is via Allington Street.
- 3.02 Also within the ownership of the theatre is the Duke of York public house. This abuts the theatre on the west side as shown edged blue on the Plan 1. The site area extends to approximately 0.0235 ha and the frontage to Victoria Street is 15.76 metres. To the east of the theatre is 3-11 Bressendon Place and 120 – 124 Victoria Street, SW1. This property is shown edged green on Plan 1. The site area of the Bressendon Place properties is approximately 0.1323 ha. To the north of the theatre is the building known as Elliot House, shown edged in yellow on Plan 1. The site area of Elliot House extends to approximately 0.0727 ha.
- 3.03 VPT is a listed building. The listing citation is as follows:

Listing Citation

The listing citation (CD VSU.L1) from the English Heritage Web-site is as follows:

<http://www.imagesofengland.org.uk/Details/Default.aspx?id=207421&mode=quick>

IoE Number: 207421

Location: VICTORIA PALACE VARIETY THEATRE, VICTORIA STREET SW1 (north side)

WESTMINSTER, CITY OF WESTMINSTER, GREATER LONDON

Photographer: Miss Patricia Philpott ARPS

Date Photographed: 21 April 2001

Date listed: 28 June 1972

Date of last amendment: 28 June 1972

Grade II

TQ 2879 SW CITY OF WESTMINSTER VICTORIA STREET, SW199/11 (north side) 28.6.72 Victoria Palace Variety Theatre GVII

TQ 2879 SW CITY OF WESTMINSTER VICTORIA STREET, SW1 99/11 (north side) 28.6.72 Victoria Palace Variety Theatre GV II Theatre. 1911. Frank Matcham . White glazed faience. Roof not visible. Baroque style. 4 main storeys, 3 main bays (channelling throughout). Central entrance with original glazed doors having curved glazing bars . Cantilevered canopy at least partly C20. Central bay projects slightly with great niche rising through to first and second floors (blocked). Open loggia with Ionic columns to third floor; pediment over. Square headed windows, paired to



first and second floors; oval to third being surmounted by cherubs head keystones and flanked by Ionic columns. Rich modillion cornice. Parapet. Crowning Ionic cupola. Interior relatively little altered; restrained treatment to foyer and Dress Circle Bar with coupled Doric columns, marble balustrade to staircase; auditorium Baroque treatment, etc. Curtains!!! Editors Ian Mackintosh and Michael Sell.

- 3.04 The consideration of the listing citation to show the cultural, historical and architectural significance of the Victoria Palace Theatre has been analysed by John Earl (CD OBJ21/P2). From a town planning perspective, the building is plainly of considerable importance both architecturally and historically. It has considerable presence in this part of Victoria Street and is a notable local landmark. It is also notable that the interior of the theatre has been little altered.



4.00 Site History

- 4.01 There has been a theatre on this site since 1832, originally known as Moy's Music Hall, well before the coming of the railways. This was then renamed in 1863 and became The Royal Standard Music Hall. In 1886, when Victoria Street and Victoria Station were built, the theatre was demolished and the rebuilt Royal Standard Music Hall became "the most comfortable Hall of entertainment in London... no expense has been spared."
- 4.02 The arrival of electricity and early 20th century theatrical technology meant that the theatre then became obsolete. The then oldest licensed music hall in London was demolished.
- 4.03 As can be seen from the photographs of the property, (Appendix 2) Victoria Palace Theatre has an imposing symmetrical façade to Victoria Street and is the dominant building in the streetscape within the vicinity of the site.
- 4.04 The current building was constructed in 1910 -11. The theatre was designed by Frank Matcham and was the latest of four great variety theatres built in the West End by this architect, who was the most prolific and inventive British theatre architect, at a cost of £12,000.
- 4.05 The grey marble foyer with its gold mosaic and white Sicilian marble pillars is much as it was in 1911. Outside, the façade, canopy and cupola have recently been restored to their former glory.
- 4.06 The auditorium holds 1550 seats and is partially air-conditioned. It features a magnificent sliding roof, a simple precursor of air-conditioning. Originally the Stalls, Dress Circle and Grand Circle each had their own entrance and their own box office selling pre-printed tickets from a paper plan.
- 4.07 As acknowledged by John Earl, this theatre is a fine example of his later work and is one of the defining works of architecture in the history of variety entertainment. It is a very well preserved building of outstanding architectural quality and is included in the statutory list of buildings of special architectural or historic interest (Grade II) – see earlier listing citation at 3.03.
- 4.08 The theatre retains much of its original character, even more so since the auditorium, front of house and dressing rooms have recently been refurbished.



5.00 Relevant Planning History

- 5.01 An extract from Westminster City Council's planning register, identifying the most significant components of the planning history of the Victoria Palace Theatre and the adjoining Duke of York Public House is outlined in Table 1, below.

Table 1: Victoria Palace Theatre & Duke of York Public House significant Planning History

Address	Reference No	Description	Decision	Decision Date
Victoria Palace Theatre, 126 Victoria Street	08/04886/FU LL	Extension and alterations to front of house areas. Extension and alterations to fly-tower and back of house areas. New seating layout to auditorium.	Pending	Receipt Date: 03.06.2008
	93/01771/FU LL	Partial demolition and new 5 storey wing in existing side yard to provide additional theatre accommodation. Internal alterations to front of house.	Permitted	12.08.1993
	93/00453/FU LL	Erection of 2 portable buildings on roof behind main façade for use as ancillary offices for a temporary period of 2 years/	Permitted	12.03.1993
Duke of York Public House, 130-134 Victoria Street	87/05441/FU LL	Extension and alteration to both properties.	Permitted	16/03/1989

- 5.02 It is evident that over the years, VPT has been subject to some modest changes and refurbishment, but as can be seen from the table above, there are existing aspirations to extend the theatre, in particular the inclusion of extensions and alterations to construct a new fly-tower and create a new seating layout in the auditorium. The application for these works has been prepared and submitted to Westminster Council. A decision is pending. The proposals would satisfy the expectations of the City Council's Victoria Area Planning Brief, adopted April 2006 and referred to in greater detail in the policy section of my proof in section 8. Copies of the theatre's application, plans and supporting statements are provided in Appendix 3. These documents clearly explain the intention of VPT and why the fly tower is necessary for the continued use of the theatre in the future.
- 5.03 It is understood that If the revised VSU proposals were to be allowed as proposed, the effect would be that due to the positioning of the proposed bank of three escalators rising from the Victoria Line Station platforms and the resultant effect due to the lack of load bearing capacity above these works, it would not be feasible to construct the proposed fly tower. This is explained in the proofs of Jon Satow (CD



OBJ21/P6), Richard Greer (CD OBJ21/P4) and Colin Wilson (CD OBJ21/P10). As further explained by Colin Wilson's evidence, were it necessary at some point in the future to rebuild the theatre, LUL's proposed jet grouting beneath the theatre would mean that there would again be insufficient load bearing capacity to support such rebuilding.

- 5.05 Finally of relevance to the planning history of VPT are the three recent planning applications for major redevelopment by Land Securities adjacent to the theatre. These are described in detail in the Proof of Mr Bullock in section 14 of his evidence (CD OBJ3/P5) It is sufficient at this point to summarise the content of these applications in terms of land use as being:

Land Use	GEA (sq m)	Percentages
Office	82,326	62.4%
Retail	12,734	9.3%
Flexible Community/ Office space	1,652	1.3%
Residential	35,234	26.7%
<hr/>		
TOTAL	131,946	100%

- 5.06 The revised proposals have been the subject of new planning applications submitted on the 19 September 2008 and registered on the 22 September 2008 under reference numbers 08/08205/FULL, 08/08206/FULL and 08/08207/FULL.



6.00 Use of VPT as a theatre

- 6.01 The history of the theatre has already been explained earlier in my proof and the proof of John Earl. For more than 60 years, VPT has been known as a variety show venue. From February 1945, the theatre renewed its connection with variety in “The Crazy Gang” which played for an unprecedented 15 years. Following this, the production of “The Black and White Minstrel Show” ran for 4344 performances over the next 10 years. Notably, in 1982, a production of “The Little Foxes”, saw Elizabeth Taylor making her London stage debut. Another unusually long-running show at the theatre was “Buddy – The Buddy Holly Story”, which played until 1995, following which the hugely popular “Jolson” was shown, starring one of Britain’s best loved entertainers, Brian Conley. Since 1997, the theatre has played host to “Always”, “Fame”, the revival of “Annie”, “Girls’ Night Out”, The Rocky Horror Show”, “Soul Train” and “The Pajama Game”. In 2001, the theatre’s history of popular plays continued with the Broadway smash hit revival of “Kiss Me, Kate” which competed for the Laurence Olivier award for Best Musical Revival and ran for a year. Following this success came the hugely well-liked musicals “Grease” and “Tonight’s The Night – The Rod Stewart Musical”. The pantomime “Snow White and the Seven Dwarfs” enjoyed a spirited five weeks over Christmas 2004 starring Lily Savage entertaining audiences of all ages.
- 6.02 The current production of “Billy Elliot” opened to great acclaim in March 2005 and has gone on to collect every possible Best Musical award and is due to continue showing at the theatre for the foreseeable future.
- 6.03 The theatre has been managed by Sir Stephen Waley-Cohen since 1991 and entered the new millennium with an adventurous building programme including an enlargement of the Foyer, improvements to WC facilities and increasing the dressing room space. These upgrades have not detracted from the theatre’s original character. The auditorium (which now seats 1550 and is partially air-conditioned for audience comfort), front of house and dressing rooms have been refurbished in the style that was first conceived in 1911. The façade, canopy and cupola were restored to their former charming condition most recently in 2006. A replica of the original statue of Pavlova was reinstated to its original place above the cupola of the Victoria Palace (John Earl’s Proof CD OBJ21/P2A, Appendix E, photo 12)



- 6.04 Without the VSU project, the theatre would continue to provide shows of this genre for years to come. The current management has built up a strong clientele which serves a particular market niche which contributes to London's "theatre-land", an acknowledged national cultural and tourism strength. Like other entertainment activities, there is however a fragility to the business which needs to remain attractive to both promoters and audiences alike, as identified and explained in the proofs of Mr Stoneman (CD OBJ21/P8), Mr Earl and Mr Satow.



7.00 LUL's Original, Revised Proposals and Proposed Protective Measures to Listed Buildings

a) November 2007 proposals for the Victoria Station Upgrade (VSU)

7.01 The original proposals were submitted on 22nd November 2007 for the Victoria Station Upgrade (VSU) works (CD VSU.A1). The aims of LUL as set out in its concise statement of aims for the proposal were to

- 1) Increase station capacity
- 2) To minimise passenger journey time and
- 3) To improve quality of access, interchange and ambience

b) Protective measures to listed buildings

7.02 It was not until April 2008, that proposals were submitted to Westminster City Council, in relation to the matters associated with the protective measures to listed buildings effected by the November 2007 proposals (CD VSU.L2 – L8). In relation to VPT, these comprised a proposal for Listed Building Consent (CD VSU.L3) made by London Underground under section 10 for Listed Building Consent for:

- 1) Protective works to VPT including monitoring as part of the Victoria Station Upgrade (VSU) works; and
- 2) make good following the demolition of buildings that abut VPT.

c) Revised VSU Proposals

7.03 The revised proposals are said to have the same aims for the project. LUL's summary of the main modifications to the VSU scheme are set out in the Concise Statement of the Aims of the Proposals, prepared by LUL 5th August 2008 (CD VSU.A4). These proposals still provide a new paid area link connecting the existing ticketing hall with a new northern ticket hall beneath Bressenden Place. The revised scheme also provides an escalator connection to and from the new northern ticketing hall to the underground platforms serving the Victoria Line. Bircham Dyson Bell's letter of July 9th 2008¹, summarising the main modifications to the VSU scheme explains that the modifications involve no additional land. Comparing the modified scheme with the earlier November 2007 proposals, it will be seen that the modifications seek a slightly less ambitious scheme.

¹ LUL CD Draft order and other documents/ vsu-03-annex2—summary-main-modifications. PDF



7.04 In August 2008, revised proposals were made for the VSU works, with accompanying material comprising a Supplemental Environmental Statement (SES) (CD VSU.A31). The scheme changes, from the earlier November 2007 application are identified in the VSU SES Main Report, at paragraphs 2.2.8 – 2.2.14 as follows:

Reduction in size of North Ticket Hall (NTH)

The changes in the size of the NTH are due to:

- The deletion of a need to provide space for a new traction sub-station for the District line. The SES advises that this need is now to be met by upgrading the existing facility and these works do not form part of the revised VSU Scheme;
- The reduction in the requirements of the Cooling the Tube Project.
- The deletion of the secure ticket office suite;
- The use of Heavy Duty Compact Escalators rather than the standard London Underground escalators; and
- The deletion of the western entrance and exit point on the corner of Bressenden Place and Victoria Street.

Deletion of Cooling the Tube tunnel

The reduction in requirements of the CTP has allowed the tunnel (Tunnel #20) beneath the Victoria Palace Theatre to be deleted.

Relocation of the Vauxhall Bridge Road sump

As a result of the reduction in size of the NTH it has been possible to relocate the Vauxhall Bridge Road Sump (Sump #9) adjacent to it, north of Victoria Street.

Rebuild of the Victoria line running tunnels

LUL advise in the VSU SES at paragraph 2.2.11 that due to the close proximity of the Fire Fighters Shaft to the Victoria line running tunnels it had previously been envisaged that a length of running tunnel would need to be rebuilt. LUL now believe that calculations and surveys of clearances have since been undertaken which show that these tunnels can be strengthened and protected such that they do not need rebuilding.

Relocation of construction shaft

The construction shaft in Allington Street has been relocated with a consequential realignment of Paid Area Link (PAL) North #4b. LUL advise that this change has been made so as to reduce the impact of VSU on possible third party redevelopment proposals in the area.



Amendments to the South Ticket Hall (STH)

Re-planning of the internal arrangements within the STH has allowed the depth of the box to be reduced by one storey .

Minor changes to the alignment of the Paid Area Link

LUL have advised that as detailed design has progressed it has been possible to identify a number of minor amendments to the alignment of parts of the Paid Area Link (PAL), in particular PAL13.

Withdrawal of the earlier proposals for demolition of 120-124 Victoria Street and 3-11 Bressenden Place.

- 7.05 Importantly, the earlier applications for planning permission and listed building consent made by LUL to redevelop 120-124 Victoria Street and 3-11 Bressenden Place were withdrawn and instead the VSU Site Reinstatement Strategy in the revised proposals explains how LUL will deal with those sites where buildings will be demolished for the purposes of the works.



8.0 Planning Policy relevant to the VSU proposals

8.01 I now summarise the relevant planning policy considerations that will be appropriate to consider in relation to the VSU proposals, before examining the adequacy of the proposed mitigation measures proposed by LUL and then examining the proposals in the light of these mitigation proposals to form my opinion as to the extent to which it may be said that the proposals comply with planning policy having regard to the salient impacts outlined in section 8 of my evidence.

8.02 The relevant planning policies to the VSU proposals in relation to VPT are

National Policies

8.03 The principal national policies of relevance to this matter are:

Planning Policy Statement (PPS) 1: Delivering Sustainable Development (CD VSU.C1)

Planning Policy Guidance 15: Planning and the historic environment (CD VSU.C8)

Planning Policy Guidance 24: Planning and Noise (CD VSU.C12)

PPS1

8.04 Planning Policy Statement (PPS) 1: Delivering Sustainable Development,² sets out the overriding Central Government planning objectives for the planning system, seeking to strike the appropriate balance between competing land use demands and community needs in a sustainable framework. In setting out its objectives, right at the outset in paragraph 1, this policy advice states that good planning *“...makes a positive difference to people's lives and helps to deliver homes, jobs, and better opportunities for all, whilst protecting and enhancing the natural and historic environment, and conserving the countryside and open spaces that are vital resources for everyone.”*

8.05 In setting out the key principles and following primary legislation, the guidance emphasises the importance of the development plan system and the need to ensure that in striking the balance, that these *“aims should be pursued in an integrated way through a sustainable, innovative and productive economy that delivers high levels of employment, and a just society that promotes social inclusion,*

² Planning Policy Statement 1: Delivering Sustainable Development

Date published: February 2005

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement1.pdf>

ISBN: 0 11 753939 2



sustainable communities and personal well being, in ways that protect and enhance the physical environment and optimise resource and energy use". (PPS1 paragraph 4).

- 8.06 In seeking to protect and enhance the environment, the guidance clearly sets out that it is "... *committed to protecting and enhancing the quality of the natural and historic environment, in both rural and urban areas. Planning policies should seek to protect and enhance the quality, character and amenity value of the countryside and urban areas as a whole. A high level of protection should be given to most valued townscapes and landscapes, wildlife habitats and natural resources.*" (PPS1 paragraph 17)
- 8.07 In setting out the Government's general approach to delivering sustainable development, PPS1 seeks to: "*(ix) Enhance as well as protect biodiversity, natural habitats, the historic environment and landscape and townscape character*" (PPS1 paragraph 27)
- 8.08 In relation to community and stakeholder engagement, PPS1 recognises the importance of the planning system in allowing communities real opportunities to influence the way in which their areas are developed. The guidance states that... "*More effective community involvement is a key element of the Government's planning reforms. This is best achieved where there is early engagement of all the stakeholders in the process of plan making and bringing forward development proposals. This helps to identify issues and problems at an early stage and allows dialogue and discussion of the options to take place before proposals are too far advanced.*" (PPS1 paragraph 11)

PPG 15

- 8.09 Turning to Planning Policy Guidance 15: Planning and the Historic Environment³, this policy guidance is plainly of particular importance in the light of the heritage interest of the Victoria Palace Theatre. At paragraph 2, PPG 15 states, "*This guidance is not only for local authorities, but also for other public authorities, property owners, developers, amenity bodies and all members of the public with an interest in the conservation of the historic environment*".
- 8.10 In setting out the importance of conserving our heritage and explaining the importance of the relationship between town planning and conservation, paragraphs 1.1 – 1.2 state:
- "1.1 It is fundamental to the Government's policies for environmental stewardship that there should be effective protection for all aspects of the historic environment. The physical survivals of our past are to be valued and protected for their own sake, as a central part of our cultural heritage and our sense of*

³ Planning Policy Guidance 15: Planning and the historic environment
September 1994 ISBN: 0 11 752944 3



national identity. They are an irreplaceable record which contributes, through formal education and in many other ways, to our understanding of both the present and the past. Their presence adds to the quality of our lives, by enhancing the familiar and cherished local scene and sustaining the sense of local distinctiveness which is so important an aspect of the character and appearance of our towns, villages and countryside. The historic environment is also of immense importance for leisure and recreation.

1.2 The function of the planning system is to regulate the development and use of land in the public interest. It has to take account of the Government's objective of promoting sustainable economic growth, and make provision for development to meet the economic and social needs of the community. As PPG1 makes clear, planning is also an important instrument for protecting and enhancing the environment in town and country, and preserving the built and natural heritage. The objective of planning processes should be to reconcile the need for economic growth with the need to protect the natural and historic environment”.

8.11 The need to reconcile the competing land use claims between the needs of the theatre and LUL are central to this case and I return to this in considering the approach adopted by LUL in its approach to evaluating its proposals and the extent to which other options should be properly tested.

8.12 In relation to development control issues affecting heritage assets, PPG 15, paragraph 2.12 states:

“It is generally preferable for both the applicant and the planning authority if related applications for planning permission and for listed building or conservation area consent are considered concurrently. Authorities are required by section 66(1) of the Act, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses. It is unlikely that they will be able to do so effectively unless the planning application is accompanied by a listed building consent application (where the development in question requires one) or at least contains an equivalent amount of information. If an authority is asked to consider a planning application in isolation, a decision on that application cannot be taken as predetermining the outcome of a subsequent application for listed building consent.”

8.13 The effect of the LUL VSU proposals for demolition of the neighbouring building will have an effect on the setting of the theatre. PPG 15 provides guidance on proposals for demolition of buildings which may be constructed alongside historic buildings at paragraph 2.14 as follows:

“2.14 The design of new buildings intended to stand alongside historic buildings needs very careful consideration. In general it is better that old buildings are not set apart, but are woven into the fabric of the living and working community. This can be done, provided that the new buildings are carefully designed to respect their setting, follow fundamental architectural principles of scale, height, massing and alignment, and use appropriate materials. This does not mean that new buildings have to copy their older neighbours in detail: some of the most interesting streets in our towns and villages include a variety of building styles, materials, and forms of construction, of many different periods, but together forming a harmonious group. Further general advice on design considerations which are relevant to the exercise of planning controls is given in Annex A to PPG 1”.



8.14 In addition guidance on the effect upon the setting of a listed building due to development will be particularly of relevance in this matter. At paragraph 2.16, in considering the setting of listed buildings, PPG15 states:

“..... Also, the economic viability as well as the character of historic buildings may suffer and they can be robbed of much of their interest, and of the contribution they make to townscape or the countryside, if they become isolated from their surroundings, eg by new traffic routes, car parks, or other development.”

8.15 Regarding the use of listed buildings, at paragraph 3.8, PPG 15 advises:

“3.8 Generally the best way of securing the upkeep of historic buildings and areas is to keep them in active use. For the great majority this must mean economically viable uses if they are to survive, and new, and even continuing, uses will often necessitate some degree of adaptation. The range and acceptability of possible uses must therefore usually be a major consideration when the future of listed buildings or buildings in conservation areas is in question”.

8.16 This is an important consideration for the Victoria Palace Theatre concerning the VSU proposals.

8.17 PPG15 also considers and anticipates the competition and conflict between existing historic building and proposed transport development. At paragraphs 5.2 – 5.3, PPG15 states:

“Major new transport infrastructure developments can have an especially wide-ranging impact on the historic environment, not just visually and physically, but indirectly, for example, by altering patterns of movement or commerce and generating new development pressures or opportunities in historic areas. Local highway and planning authorities should therefore integrate their activities and should take great care to avoid or minimise impacts on the various elements of the historic environment and their settings.

The Secretaries of State also attach particular importance to early consultation on traffic management and highway maintenance schemes, and associated development proposals which would affect listed buildings or conservation areas or parks, gardens or battlefields and their settings. Local highway and planning authorities should take great care to assess the impact on existing roads of new projects, eg for the rerouting of traffic or for pedestrianisation. They are urged to seek the advice of English Heritage, where appropriate, before determining any such proposals.”

8.18 At paragraph 5.3 of PPG 15, it will be noted that both the Secretaries of State attach particular importance to early consultation on the likely effects of transport schemes upon listed buildings and their settings and the likely impacts due to such proposed development. I am fortified in this view by succeeding paragraphs 5.8 – 5.10, whereby schemes promoted under the Transport and Works Act 1992 which involves works to listed buildings are the subject of parallel applications for planning permission for listed building consent.



“Since 1 January 1993, when Part I of the Transport and Works Act 1992 came into force, proposals which would have previously been authorised under private Bill procedure have instead had to be authorised by Orders made under that Act. Such proposals include the construction or operation of railways, tramways, trolley vehicle systems, other guided transport systems, inland waterways, and structures interfering with rights of navigation. The Act brings the procedures for authorising such schemes more into line with those which have applied for years to highways projects. If the relevant Secretary of State decides to make an Order under the Act, he may at the same time direct that planning permission be deemed to be granted for the proposal, to the extent to which it involves carrying out any development.

Where the proposal involves works to a listed building, or demolition of an unlisted building in a conservation area, a separate application must be made to the local planning authority for listed building consent or conservation area consent respectively. The regulations which normally apply to such consent applications are subject to minor modifications so that they may more easily be progressed in parallel with the application for the related order. These changes are set out in the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedures) Regulations 1992. An application for listed building or conservation area consent made concurrently with an application for an order under the 1992 Act will automatically be referred by the local planning authority to the Secretary of State for the Environment for his decision, without the need for any specific direction. Where there is need for a public local inquiry, the related applications will be considered at a concurrent inquiry. This means that one Inspector will be able to make mutually compatible recommendations about the different applications.

A fuller description of these concurrent procedures (together with the procedure for applications under the 1992 Act generally) is set out in the Department of Transport publication Transport and Works Act 1992: A Guide to Procedures.”

Planning Policy Guidance 24: Planning and Noise

- 8.19 Planning Policy Guidance 24: Planning and Noise⁴, provides national policy guidance regarding the impact of noise on development proposals, and guides local authorities in England on the use of their planning powers to minimise the adverse impact of noise outlining the considerations to be taken into account in determining planning applications for noise-sensitive developments and for those activities which generate noise. Advice to local planning authorities in relation to noise-sensitive development is set out in paragraph 12 of PPG24 as follows:

“Local planning authorities should consider carefully in each case whether proposals for new noise-sensitive development would be incompatible with existing activities. Such development should not normally be permitted in areas which are - or are expected to become -subject to unacceptably high levels of noise. When determining planning applications for development which will be exposed to an existing noise source, local planning authorities should consider both the likely level of noise exposure at the time of the application and any increase that may reasonably be expected in the foreseeable future, for example at an airport.”

⁴ Planning Policy Guidance 24: Planning and Noise
September 1994 ISBN: 0 11 752924 9



8.20 The guidance also recognises the importance of noise mitigation measures to reduce the harm associated with and caused by noise from different sources. Paragraph 13 refers to a number of measures can be introduced to control the source of, or limit exposure to noise. The guidance indicates that such measures should be proportionate and reasonable and may include one or more of the following:

“(i) engineering: reduction of noise at point of generation (eg by using quiet machines and/or quiet methods of working); containment of noise generated (eg by insulating buildings which house machinery and/or providing purpose-built barriers around the site); and protection of surrounding noise-sensitive buildings (eg by improving sound insulation in these buildings and/or screening them by purposebuilt barriers);

(ii) lay-out: adequate distance between source and noise-sensitive building or area; screening by natural barriers, other buildings, or non-critical rooms in a building;

(iii) administrative: limiting operating time of source; restricting activities allowed on the site; specifying an acceptable noise limit.”

8.21 In relation to the VSU proposals, plainly engineering solutions would be expected to be carefully considered by the promoters of noise generating development associated with railway operations and the likely effect upon the theatre and further seek appropriate mitigation.

8.22 The guidance in PPG24 at paragraph 14 calls for early consultation with the applicant about the possible use of such mitigation measures as these may enable them to be incorporated into the design of the proposal before it is formally submitted for determination. Sadly this did not happen effectively in relation to the revised VSU proposals.

8.23 PPG24 also emphasises the relevance of Environmental Assessment in relation to noise generating development and the importance of carrying out appropriate analysis in connection with development proposals.



The London Plan

8.24 The London Plan, Spatial Development Strategy for Greater London, Consolidated with Alterations since 2004, (CLP) was published in February 2008 (CD vsu.c20)⁵. The London Plan sets out six objectives for Greater London (Introduction, pages 6-12) as follows:

- (1) to accommodate London's growth within its boundaries without encroaching on open spaces;
- (2) to make London a better city for people to live in;
- (3) to make London a more prosperous city with strong and diverse economic growth;
- (4) to promote social inclusion and tackle deprivation and discrimination;
- (5) to improve London's accessibility, (particularly by public transport);
- (6) to make London a more attractive, well-designed and green city.

8.25 In addition, the London Plan sets out, in Policy 5B.1, a series of strategic priorities for the Central London 'sub-region'. These priorities are:

- (a) to promote and protect the vital mix of culture, government, leisure and commerce together with its historic buildings, housing, open spaces and public realm that are Central London's unique attraction for residents, visitors and business;
- (b) to sustain, enhance and promote the unique scale and mix of activities and settings of the Central Activities Zone which form the core of London's wider offer as a world city and as a capital city;
- (c) to identify capacity to accommodate new job and housing opportunities and appropriate mixed-use development;
- (d) to maximise the number of additional homes, including affordable housing, by exceeding housing provision targets set in the plan and by securing mixed and balanced communities;
- (e) to promote and intensify retailing, services, employment, leisure and housing in town centres and opportunities for mixed-use development;
- (f) to plan for and secure the necessary financial resources to deliver planned transport infrastructure for the sub-region, including local schemes that improve public transport, walking and cycling connections to town centres and employment locations;
- (g) to improve the variety, quality and access to available employment sites to meet the identifiable demands for employment land;

⁵ The London Plan, Spatial Development Strategy for Greater London, Consolidated with Alterations since 2004, was published in February 2008, Greater London Authority, www.london.gov.uk ISBN: 9781847811295



- 8.26 There are a number of policy issues of relevance to the effect of the VSU proposals on VPT which fall to be considered under the CLP. Under the cross cutting policies, in section 4 of the CLP, the Plan recognises the importance of the adverse impact of noise on endeavouring to promote a sustainable and compact city. At paragraph 4.6 for example, the CLP states that strategies will be required to minimise noise pollution. This ambition is manifest in Policy 4A.3:

“Sustainable design and construction

The Mayor will, and boroughs should, ensure future developments meet the highest standards of sustainable design and construction and reflect this principle in DPD policies. These will include measures to:

...

- reduce adverse noise impacts”.*

- 8.27 The test in Policy 4A3 places an onerous burden on developers in calling for the “highest standards of sustainable design and construction”. It is against this policy and others that the proposal for the VSU scheme is to be assessed.

- 8.28 The Mayor’s policy position in terms of reducing noise is set out in Policy 4A.20 in the CLP as follows:

“Policy 4A.20 Reducing noise and enhancing soundscapes

The Mayor will and boroughs in DPDs should reduce noise by:

- minimising the existing and potential adverse impacts of noise on, from, within, or in the vicinity of, development proposals*
- separating new noise sensitive development from major noise sources wherever practicable*
- supporting new technologies and improved practices to reduce noise at source, especially in road, rail and air transport*
- reducing the impact of traffic noise through highway management and transport policies (see Chapter 3C)*
- containing noise from late night entertainment and other 24-hour activities, and where appropriate promoting well-managed designated locations (see Chapter 3D)*
- identifying areas of relative tranquillity, which it is intended should be protected or enhanced.”*

- 8.29 It will be noted that the policy is to support new technologies and improved practices to reduce noise at source, especially in road, rail and air transport. This will necessarily apply to underground railway development.



Victoria – CLP- Opportunity Area

- 8.30 In relation to the sub regional planning policies within the CLP, it will be evident from Map 5B.1 reproduced in Appendix 6, that Victoria is identified as an Opportunity Area and located with the Central Activities Zone (CAZ), within the North London sub-region.
- 8.31 CLP policy for Opportunity Areas, is set out earlier in the Plan in relation to the overall strategy for London in section 2A. The specific policy defining what the Mayor expects from the Opportunity Areas is contained within Policy 2A.5. This states:

Policy 2A.5 Opportunity Areas

As part of the process of producing Sub-Regional Implementation Frameworks, strategic partners should work with the Mayor to prepare, and then implement, spatial planning frameworks for Opportunity Areas as shown on Map 2A.1, or to build on frameworks already developed. These frameworks will set out a sustainable development programme for each Opportunity Area, to be reflected in DPDs, so as to contribute to the overall strategy of the London Plan to:

- seek to exceed the minimum guidelines for housing having regard to indicative estimates of employment capacity set out in the sub regional tables (see Chapter 5)*
- maximise access by public transport*
- promote social and economic inclusion and relate development to the surrounding areas, especially any nearby Areas for Regeneration*
- take account of the community, environmental and other distinctive local characteristics of each area*
- deliver good design, including public realm, open space and, where appropriate, tall buildings*
- co-ordinate development that crosses borough boundaries.*

- 8.32 It will be noted that there are a number of policy ambitions for the Opportunity Areas, including the need to take account of the community, environmental and other distinctive local characteristics of each area.



8.33 At paragraph 5.37, the CLP states that Victoria is a major transport interchange and the busiest in London. The CLP recognises the transport facilities need substantial upgrading and enhancement and that the public realm is in need of improvement. The CLP recognises that the station and nearby sites have significant capacity for intensification. The CLP also recognises that at Victoria, in upgrading the transport interchange, “This will require management to sustain its heritage features”.

The CLP Central Activities Zone

8.34 Within the CAZ are a unique cluster of activities including central government offices, headquarters and embassies, the largest concentration of London’s financial and business services sector and the offices of trade, professional bodies, institutions, associations, communications, publishing, advertising and the media. In section 5G of the CLP, at paragraph 5.171, the CLP identifies the importance of other key uses and activities, including those associated with tourism, culture and entertainment, which encompasses the uses associated with VPT. Central to the CAZ policy (paragraph 5.172), are the Mayor’s objectives to ensure within the CAZ that there is “adequate capacity to sustain future growth, to harness the opportunities that this offers for Londoners and the country as a whole and to secure and enhance its unique environment and attractions. Within this context CAZ policy also provides for the protection and enhancement of local uses.”

Westminster City Council’s UDP

8.35 Westminster City Council’s UDP (CD VSU.C35) was adopted in January 2007 and is therefore reasonably up to date, although the City Council is preparing its LDF and at the time of writing, the consultation period for representations on the draft Core Strategy has just ended.

8.36 In relation to the UDP, this is predicated on the following six interlinked planning aims:

- 1) Enhancing the attraction of central London
- 2) Fostering economic vitality and diversity
- 3) Building sustainable communities
- 4) Integrating land use and transport policies and reducing the environmental impact of transport
- 5) Ensuring a high quality environment
- 6) Working towards a more sustainable city



- 8.37 These planning aims are reflected in the strategic policies in Part 1 of the plan and provide a strategic development framework for at least fifteen years. Part 2 of the plan develops these aims into detailed policies to guide development for a period of at least ten years. I now identify those strategic policies of relevance to the VSU proposals and the likely impact upon VPT.
- 8.38 Strategic policies STRA 1-4 seek to enhance the attraction of central London. Of these the following policies are important and support the continuing use and retention of the Victoria Palace:

POLICY STRA 1: WORLD CLASS CITY STATUS

It is the City Council's aim:

To foster Westminster's key 'world class' city roles as a centre for international organisations, headquarters, business services, housing, retailing, medicine, education and other professions, media, arts, culture, entertainment and tourism, and to allow sustainable developments that promote them.

POLICY STRA 3: WESTMINSTER'S CENTRAL AREA

It is the City Council's aim:

To protect and enhance the strategic role, historic character, social and cultural importance of the central part of Westminster through the designation of a Central Activities Zone and Central Activities Zone Frontages.

- 8.39 To foster the vitality and diversity of Westminster's economy by allowing the upgrading and renewal of commercial buildings, strategic policies 5-13 have relevance to this matter. The aspirations of Westminster City Council, Land Securities and the Victoria Palace Theatre are aligned to the extent that proposals before the City Council for redevelopment of land adjoining VPT, propose the transfer of land by way of a planning obligation to achieve the objective of Policy STRA 7 below:

POLICY STRA 7: PLANNING OBLIGATIONS AND BENEFITS

It is the City Council's aim:

To secure planning obligations and the provision of related benefits in all appropriate types of development. These should:

- i) have an identifiable connection with the development**
- ii) be in line with the policies in Part 2**
- iii) be appropriate to the location, scale and nature of the development**
- iv) seek to mitigate the economic, environmental, transportation, social and community consequences of the development.**



8.40 Policy Stra 13 is plainly important in the context of the continued use of the theatre:

POLICY STRA 13: ARTS, CULTURE AND ENTERTAINMENT

It is the City Council's aim:

(A) To maintain and improve the range of arts, culture and entertainment uses in Westminster

(B) To restrict further late-night entertainment uses in areas that already have an over-concentration.

8.41 Also concerning the strategic policies seeking protection of amenity STRA 17 is also relevant relating to the reduction of noise:

NOISE AND VIBRATION

POLICY STRA 17: NOISE

It is the City Council's aim:

To reduce noise levels in Westminster below maximum noise levels set out in the World Health Organisation 'Guidelines for Community Noise'.

8.42 The strategic policies relating to achieving an environment of quality by high standards of design and conservation are also important, in particular strategic policies STRA 27 and STRA 29. Arguably due to the proximity to conservation areas policy STRA 28 is also relevant due to the potential harm to the amenity and character of those conservation areas through uncertainty and possibly inappropriate development above the Victoria Line Station.

STANDARDS OF DESIGN

POLICY STRA 27: STANDARDS OF DESIGN

It is the City Council's aim:

To promote the highest standards of sustainable urban design and architecture in all development and to encourage inventive architecture in the context of Westminster's unique local distinctiveness.



CONSERVATION AREAS AND THE WORLD HERITAGE SITE

POLICY STRA 28: CONSERVATION AREAS AND THE WORLD HERITAGE SITE

It is the City Council's aim:

To preserve or enhance the built and landscaped environment of Westminster; paying particular regard to its historic character, appearance and cultural importance and ecological value.

LISTED BUILDINGS, HISTORIC PARKS AND GARDENS, AND ARCHAEOLOGY

POLICY STRA 29: LISTED BUILDINGS, HISTORIC PARKS AND GARDENS, AND ARCHAEOLOGY

It is the City Council's aim:

**(A) To preserve or enhance listed buildings and their settings, historic parks and gardens and their surroundings and other features of special or local architectural, historic or ecological interest
(B) To investigate, record and protect Westminster's archaeological heritage.**

8.43 In Part 2 of the UDP, specific land use planning issues are the subject of related development control policies. The specific chapters of relevance to these proposals are:

Chapter 4	Transport
Chapter 8	Tourism, Arts, Culture and Entertainment
Chapter 9	Environment
Chapter 10	Urban Design and Conservation

8.44 Turning to the transport policies, TRANS 5 where the aim is to maintain and improve the quality, reliability and accessibility of rail transport is relevant:

POLICY TRANS 5: SURFACE, UNDERGROUND RAILWAYS AND TRAMS

(A) The City Council will encourage and support improvements to the main line rail termini, Underground stations and associated interchange facilities, including improved access to and capacity of stations and interchanges. The Council will operate with the Department for Transport, National Rail, Transport for London, London Underground and other appropriate authorities in any studies undertaken with a view to improving such facilities and may seek to undertake such studies through agreements with developers.



(B) The City Council will seek to retain and enhance accessibility to public transport in all parts of the City. The City Council will oppose the permanent closure of any station or line unless there are alternative proposals, which can be satisfactorily demonstrated to offer overall benefits.

(C) Where new or additional rail or tram facilities are proposed, the City Council will seek to ensure that any movement which may be generated by such a facility can be adequately catered for by public transport and that interchange between different forms of public transport is improved. The City Council will discourage proposals that result in increased vehicle journeys unless the net impact is a more sustainable transport operation. The City Council will seek to protect the environment of the surrounding area from the adverse impact of construction, particularly where residents are affected. This will include the effects of construction and diverted traffic and the unnecessary demolition of listed and other valued buildings.

(D) Where new or improved rail or tram facilities are proposed the City Council will seek to ensure that the proposals include suitable and convenient access for people with mobility difficulties. The Council will also urge operators to improve the access for such people to existing facilities.

(E) The City Council will support improvements to railway lines and stations and recognises that the construction of new facilities and the achievement of associated community benefits may cause some disruption. The City Council will seek to work with promoters and operators to protect the environment of the surrounding area from the adverse impact of construction including construction and diverted traffic and the unnecessary demolition of, or potential impacts on, listed and other valued buildings.

(F) In appropriate cases, the City Council may seek improvements such as those outlined above through negotiations or legal agreements with developers.

8.45 It will be evident that although the City Council seeks the improvement of transport infrastructure, the policy at sub paragraph (E), qualifies this support, recognising the need to work with promoters and operators to protect the environment of the surrounding area from the adverse impact of construction including construction and diverted traffic and the unnecessary demolition of, or potential impacts on, listed and other valued buildings. This policy is central to VPT's concerns. Whilst the City Council's policy position is clear on the need for co-operative working to reduce the potential harm to listed buildings, this does not appear to have been heeded in the design development of the VSU proposals before this Inquiry.



- 8.46 Concerning the policies in Chapter 8 of the UDP which relates to Tourism, Arts, Culture and Entertainment (TACE), policies TACE 5 and in particular TACE 6 are relevant.
- 8.47 Essential the aim of these policies is to protect arts and cultural uses and theatres as indicated in the UDP at paragraph 8.47.

POLICY TACE 6: THEATRES

(A) Planning permission will not be granted for the change of use of buildings built, or previously used as theatres but not currently in theatre use, other than to a theatre use.

(B) In those very exceptional circumstances where it is necessary to redevelop a theatre, a suitable replacement theatre will be required to be provided within a stated period.

- 8.48 The UDP also points out at paragraph 8.58, that within Westminster there are 38 theatres having a total seating capacity for over 40,000 people. The explanatory memorandum also points out that most of the theatres, like VPT, occupy listed buildings: three are Grade I, ten are Grade II* and sixteen Grade II. This contributes to part of their attraction as venues, and adds immeasurably to the special character of different parts of Central London. The explanatory memorandum acknowledges that a trip to the theatre is often combined with shopping trips or visits to restaurants in the locality and so theatres help support these and other functions in the West End.
- 8.49 Whilst the policy seeks to retain theatre uses, it offers some flexibility to replace theatres in exceptional circumstances. VPT consider that the engineering proposals of LUL unnecessarily endanger the theatre due to the choice of the route of the paid area link, escalator design and construction method. UDP The explanatory memorandum to TACE 6, points to the fragility of theatre-land and the importance that the importance of London's theatres as an amenity for Londoners and their cultural contribution cultural enriching the United Kingdom. They provide, "a unique heritage unmatched anywhere in the world. They are a great attraction for British and overseas visitors. The Society of London Theatre estimates that overseas visitors buy 30 per cent of West End theatre tickets". WCC UDP, (paragraph 8.57).
- 8.50 Furthermore the UDP recognises the difficulties of upgrading theatre facilities to meet the needs of modern theatre-goers whilst minimising adverse effects on theatrical heritage. The UDP states at paragraph 8.59 that " *...the City Council will continue to work closely with the theatre industry and other agencies to seek to resolve these issues whilst ensuring the City's unique theatrical heritage is*



maintained.” whilst at paragraph 8.60, the UDP states that, “It is vitally important to protect theatres for their importance to the cultural life of the country and for their valuable contribution to the character and function”.

UDP - Environmental policies

- 8.51 Chapter 9 of the UDP deals with environmental issues. In the context of the VSU proposals and their likely affect on VPT, the following policies are relevant:

ENV 2 Environmental appraisal and
ENV 6 Noise pollution

POLICY ENV 2: ENVIRONMENTAL APPRAISAL In considering planning applications:

(A) all applicants will be expected to complete those parts of the Environmental Performance Statement applicable to their proposals.

(B) the City Council will require use of Environmental Impact Assessments (EIA), for those developments that meet the Government’s Schedule 1 criteria and for those Schedule 2 criteria that the City Council determines are likely to have significant environmental effects. Applicants should refer to the Regulations and paragraph 9.20 below for the types of proposal likely to require an EIA.

- 8.52 The explanatory memorandum explains that the aim of ENV2 is to ensure that the environmental effects of developments are systematically assessed and considered. Environmental assessment has been undertaken by LUL in relation to the proposals before the Inquiry, although the quality and approach used may be at the least questionable in the light of the policy expectations in the Environment chapter of the UDP by reference to the need for and scope of Environmental Performance Statements (EPS) as set out in policy ENV 1 (E) and Annex 9.1.

Noise

- 8.53 The aims of policy ENV 6 covering noise and pollution is stated at paragraph 9.75 of the UDP to reduce noise levels throughout the City to below maximum levels set out in World Health Organisation guidelines; to limit and contain noise from development; to protect noise sensitive properties from noise disturbance; to protect tranquil areas; and to reduce noise from transport.



POLICY ENV 6: NOISE POLLUTION

The City Council will:

- 1) require design features and operational measures to minimise and contain noise from developments, to protect noise sensitive properties**
- 2) where developments adjoin other buildings or structures, require applicants to demonstrate that as far as is reasonably practicable developments will be designed and operated to prevent transmission of audible noise or perceptible vibration through the fabric of the building or structure to adjoining properties**
- 3) require a noise and vibration assessment report where development or change of use could affect noise sensitive properties**
- 4) require residential developments to provide adequate protection from existing background noise**
- 5) not permit development that would cause noise disturbance in tranquil areas**
- 6) apply conditions when granting planning permission to restrict noise emissions, transmission of noise or perceptible vibration and hours of operation, to require incorporation of acoustic measures to meet these conditions and to require, where appropriate, such conditions to be complied with before new plant or the development is used**
- 7) require all mechanical, ventilation and ducting equipment to be contained within the building envelope of new developments**
- 8) encourage developers to ensure servicing of plant and machinery so that that noise conditions are met at all times**
- 9) require developers, when carrying out construction work, to keep to a minimum disturbance to surrounding areas, and to adhere to hours of working agreed with the City Council prior to start on site**
- 10) seek measures to minimise and reduce noise from traffic.**

8.54 In the application of this policy, the City Council draws to the attention of developers that through careful design of buildings, and the way in which they are serviced by vehicles, can do much to reduce noise disturbance. At paragraph 9.76, the explanatory memorandum states that the City Council will require design and operational measures to minimise and contain noise from developments. Noise sensitive properties that are to be protected from noise from developments include theatres. Paragraph 9.78 requires that developers should have regard to the times at which noise would cause disturbance at such properties.

8.55 Importantly, in considering structural transmission of noise and vibration, paragraph 9.79 expects:

"In all developments the City Council will require that no audible noise or perceptible vibration will be transmitted through the building fabric to adjoining



properties. This will require design features to prevent or inhibit the transmission of vibration and noise through the structure.”

8.56 Concluding the section on noise, the explanatory memorandum reinforces the City Council's objective at paragraph 9.98, that the City Council's aims of reducing noise and preventing significant increases in noise, require a range of policies to:

- minimise noise emitted from developments;
- to minimise noise and vibration transmitted between structures; and
- to ensure standards of design and noise insulation that will protect developments from existing external noise.

8.57 Each of these considerations are relevant in connection with the likely effects of the VSU proposals on VPT.

UDP - Urban Design and Conservation Policies

8.58 In connection with the VSU proposals and their likely impact on VPT, the following policies area relevant:

- DES 1 Principles of urban design and conservation
- DES 10 Listed buildings

8.59 In introducing its policies on urban design and conservation, the City Council makes clear that it wishes to preserve the historic fabric of Westminster and to encourage new development where appropriate. The explanatory memorandum at 10.1 advises that the City Council's planning policies are designed to balance conservation with modern convenience, and to ensure that new development is of the highest quality and sits happily in its surroundings.

8.60 In relation to the VSU proposals, the townscape policy (DES 1) is important, notwithstanding much of the proposed development is subterranean, due to the effect that the proposals will have on the surface and the interrelationships of the proposed development both during construction and in the longer term with neighbouring buildings, including VPT.



8.61 The aim of this policy is stated as:

“To ensure the highest quality in the form and quality of new development in order to preserve or enhance the townscape of Westminster; to provide adequate access; to reduce crime and improve security.”

POLICY DES 1: PRINCIPLES OF URBAN DESIGN AND CONSERVATION

(A) Architectural quality, local distinctiveness and Sustainability

Development should:

- 1) be of the highest standards of sustainable and inclusive urban design and architectural quality**
- 2) improve the quality of adjacent spaces around or between buildings, showing careful attention to definition, scale, use and surface treatment**
- 3) use high quality, durable and, where possible, indigenous and recycled materials appropriate to the building and its setting and should respect and, where necessary, maintain:**
 - 4) the character, urban grain, scale and hierarchy of existing buildings and**
 - 5) the spaces between them**
 - 6) the character, scale and pattern of historic squares, streets, lanes, mews and passageways**
 - 7) the form, character and ecological value of parks, gardens and planned open spaces.**

(B) Amenity, accessibility and community safety

To protect amenity, development should:

- 1) adopt appropriate design measures**
- 2) provide for safe and convenient access for all**
- 3) adopt design measures to reduce the opportunity for crime and anti-social behaviour**
- 4) where proposed, incorporate appropriately designed and positioned security fixtures on buildings and street furniture so as to minimise the visual impact of these fixtures**
- 5) maintain a clear distinction between private and public spaces around buildings and ensure the informal surveillance of public space**

.



(C) Applications

Development proposals should demonstrate how they have taken into account, by use of detailed drawings and a written statement, the following:

- 1) architectural quality, local character and distinctiveness**
- 2) the location and nature of existing and potential links to and through the site and to amenities beyond the site**
- 3) townscape features within the site and features which border the site**
- 4) local views through and within the site and landmark features visible in the vicinity of the site**
- 5) accessibility, inclusive design and security measures**
- 6) regard to the relevant urban design policies contained in this chapter**
- 7) regard to supplementary design guidance produced by the City Council**
- 8) waste storage and disposal**
- 9) sustainable building principles in accordance with policy ENV 1: Sustainable and resource-efficient buildings.**

- 8.62 In applying this policy and of relevance to VPT in relation to the VSU proposals is the need to respect the discipline imposed by the existing townscape; preserve or enhance the character and appearance of conservation areas and protect the architectural and historic interest of listed buildings. Furthermore, the explanatory memorandum requires applicants to take into account and demonstrate in a design statement how they have taken into account qualities of local distinctiveness, principles of sustainable design and shown regard for the urban design policies of the UDP and relevant supplementary planning guidance. (Paragraph 10.9).
- 8.63 It will be noted that at paragraph 10.13 , the City Council seeks through implementation of the UDP policies to manage change and safeguard the valuable environment of the city. This chapter sets out the strategy, which is based upon present legislation and guidance which requires the City Council to:
- a) preserve the special architectural and historic interest of its listed buildings
 - b) preserve or enhance the character and appearance of its conservation areas
 - c) promote and reinforce local distinctiveness
 - d) take an integrated and inclusive urban design based approach.
- 8.64 The explanatory memorandum is also important in relation to the VSU proposals in that at paragraph 10.15, the City Council advises that this challenge should be met through both the retention and rigorous conservation of existing historic buildings and the considered design of new buildings and



spaces. The City Council seeks that through application of this policy there is the creation of a vital sense of coherence and unity in the local scene. The City Council's policy stated that where development is appropriate it is conceived as an integral part of its context. Again this will be important in terms of the likely impact on the setting of the VSU proposals on VPT.

- 8.65 In relation to specific listed building policy, DES 10 is relevant to this matter. The aim of the policy is simply to *“protect and enhance listed buildings, their settings and those features of special architectural or historic interest that they possess.”*

POLICY DES 10: LISTED BUILDINGS
(A) Applications for planning permission

Applications for development involving the extension or alteration of listed buildings will where relevant need to include full details of means of access, siting, design and external appearance of the proposed development in order to demonstrate that it would respect the listed building's character and appearance and serve to preserve, restore or complement its features of special architectural or historic interest.

(B) Demolition of listed buildings

- 1) Development involving the total demolition of a listed building (or any building listed by virtue of being within its curtilage) will only be permitted if, where relevant, the following criteria are met:**
 - a) it is not possible to continue to use the listed building for its existing, previous or original purpose or function, and**
 - b) every effort has been made to continue the present use or to find another economically viable use and obtain planning permission, with or without physical alteration, and**
 - c) the historic character or appearance of the main building would be restored or improved by the demolition of curtilage building(s), or**
 - d) substantial benefits to the community would derive from the nature, form and function of the proposed development, and (in all cases)**
 - e) demolition would not result in the creation of a long-term cleared site to the detriment of adjacent listed buildings**
- 2) If development is authorised in conformity with any of the above criteria, it may be made subject to a condition, agreement or undertaking that any consequential demolition shall not be carried out until all the relevant details of the proposed development have been approved and a contract has been entered into for its subsequent execution.**



(C) Changes of use of listed buildings

Development involving the change of use of a listed building (and any works of alteration associated with it, including external illumination) may be permitted where it would contribute economically towards the restoration, retention or maintenance of the listed building (or group of buildings) without such development adversely affecting the special architectural or historic interest of the building (or its setting) or its spatial or structural integrity.

(D) Setting of listed buildings

Planning permission will not be granted where it would adversely affect:

- a) the immediate or wider setting of a listed building, or**
- b) recognised and recorded views of a listed building or a group of listed buildings, or**
- c) the spatial integrity or historic unity of the curtilage of a listed building.**

(E) Theft or removal of architectural items of interest

In order to reduce the risk of theft or removal of architectural items of interest or value from historic buildings during the course of development, the City Council may require additional security arrangements to be made while buildings are empty or during the course of building works.

8.66 In relation to the application of this policy to the VSU proposals and the likely impact on VPT, the policy application by the City Council is explained in greater detail in the explanatory memorandum. In particular, at paragraph 10.133 in considering applications for development affecting listed buildings the City Council will seek to ensure that:

- a) there is no loss of important historic fabric
- b) the overall effect of a proposal is not detrimental to the architectural or historic integrity or detailing of the building
- c) the alterations are entirely in accordance with the period, style and detailing of the original building or with later alterations of architectural or historic interest
- d) existing detailing and important later additional features of the building will be preserved, repaired or, if missing, replaced
- e) all works are designed in a correct scholarly manner
- f) the alterations or extensions relate sensitively to the original building



g) the historic roof structure is preserved in situ and will apply sustainable design principles which do not conflict with the above.

8.67 I consider the appropriate application of this policy to the VSU proposals later below.

8.68 In the context of the advice in paragraph 10.134, the City Council will encourage the preservation of the historic structure of listed buildings. In particular the explanatory memorandum states:

“At all times the onus will be placed on the applicant to demonstrate that alterations, extensions and other structural works to listed buildings can be carried out without putting the retained historic fabric at risk.”

8.69 Policy DES 10, is also important in relation to the effect upon the setting of listed buildings. The relevant part of the policy is DES 10 (D).

8.70 The advice in this policy is clear in that planning permission will not be granted where it would adversely affect:

- a) the immediate or wider setting of a listed building, or
- b) recognised and recorded views of a listed building or a group of listed buildings, or
- c) the spatial integrity or historic unity of the curtilage of a listed building.

8.71 Paragraph 10.144 of the explanatory memorandum states that the setting of a listed building is also of great importance and should not be adversely affected by unsympathetic neighbouring development. This advice also states that development which adversely affects the setting of a listed will not normally be permitted, the justification being that listed buildings make an important contribution to the townscape and architectural heritage of Westminster and the City Council attaches the utmost importance to their preservation, protection and correct maintenance. Plainly DES 10 (D), a) and c) above are important considerations to be taken into account in assessing the VSU proposals on VPT.



Victoria Area Planning Brief.⁶

- 8.72 The Victoria Area Planning Brief (the Brief) (CD VSU.C42) setting out the framework for the redevelopment of the Victoria Area, including the land comprising the VSU and environs, was adopted in April 2006. In the introduction to the Brief, it clearly sets out that VPT has long standing ambitions to make improvements to the theatre (paragraph 1.5), which the City Council acknowledged that the theatre hopes to negotiate with Land Securities through the planning obligations process.
- 8.73 In considering land use and development issues in section 5 of the Brief, the City Council explains at paragraphs 5.29 – 5.31 inclusive, that:
- 1) Policy TACE 6 of the UDP sets out the policies that the City Council will apply when considering planning applications that effect theatres:
 - 2) Planning permission for a change of use of VPT will not be permitted as there are no exceptional circumstances envisaged that would warrant a change of use and also because the theatre is listed.
 - 3) There is a need to expand and improve VPT to provide for a previously envisaged extension in connection with the redevelopment of Elliot House.
- 8.74 Within the Brief at paragraph 6.12 and Map 6, (reproduced in Appendix 7), VPT is identified as a “Landmark Building”. VPT is amongst a number of buildings identified by the City Council as considered as...

“having unique qualities in terms of their architectural quality, important townscape role and relative height. Such buildings are often aligned to play a pivotal role in the townscape and in local views and vistas. Some of them are also notable for their exuberance and architectural modelling. In this context the townscape primacy of the following buildings should be safeguarded (indicates the building is listed): The designation as “landmark” does not necessarily confer any particular architectural quality, it recognises how the building is seen in the context of its surroundings. In the light of further assessment of the townscape in connection with the Land Securities Masterplan November 2005 and March 2006 it is considered that this list should be extended to include the Duke of York Public House, because of its key role in maintaining a meaningful setting for the Victoria Palace Theatre. It is also considered that Victoria Station as a whole is a landmark building, not merely its north front.*

⁶ Victoria Area Planning Brief, SW1, adopted April 2006, Westminster City Council



8.75 Other landmark buildings shown on Map 6 in the adopted Brief include:

- *Westminster Cathedral* *
- *Victoria Palace Theatre* *
- *Duke of York Public House*
- *Victoria Apollo Theatre* *
- *Grosvenor Hotel* *
- *Victoria Station* *
- *the corner block of Victoria Coach Station (172 Buckingham Palace Road)*
- *the former Airline Terminal* * (167 Buckingham Palace Road)
- *Neathouse Place*
- *Portland House*
- *Library, Buckingham Palace Road*

8.76 In considering the likely acceptable building heights in close proximity to VPT, which would affect the setting of the theatre, these are indicated on Figure 3, General Guidelines on Height, reproduced in Appendix 8. It will be seen that a building form of about 5-7 storeys would probably be acceptable to the east of VPT fronting Victoria Street and Bressenden Place; not a cleared site as proposed by LUL.

8.77 Concerning Section 7 “Victoria Interchange” of the adopted Brief, the City Council lists at paragraph 7.13, a series of urban design and architectural objectives. These are:

- To remove bus stands from Terminus Place to provide an attractive gateway to London.
- To create a coherent sense of place and urban quality appropriate for an International interchange, local residents, businesses and visitors to the area;
- To create a new townscape that provides a sense of arrival and destination;
- To give assurance to users of the area, by providing a perception of certainty, safety, security and quality of environment;
- To provide ease of passage for non-passenger pedestrians through an improved environment which makes walking easier, more direct and attractive;
- To promote sustainable development;
- To promote regeneration;
- To support intensification of the Victoria district;
- To promote equality and inclusion for all;
- To promote the retention and enhancement of Victoria’s historical setting;
- To be appropriate to Victoria’s location on the doorstep of London’s democratic, aristocratic and civic institutions;
- To encourage adjacent areas to participate in and share amenities.



- 8.78 The ante-penultimate objective is important in relation to the effect of the VSU on VPT.
- 8.79 The Brief also includes a “generic” plan in Figure 10, for convenience reproduced in Appendix 9 (see also paragraph 7.24 of the brief). With extraordinary prescience, this is very similar to the proposals advanced by Land Securities in association with VPT, a matter to which I return.



9.0 The issues to be considered in a town planning policy context in relation to the VSU proposals on Victoria Palace Theatre

9.01 The issues to be considered as a consequence of LUL's proposals on VPT in relation to the likely effect on the theatre, an important listed building are as follows:

- a) the effect on the fabric of the listed building through demolition, redevelopment of adjoining land;
- b) the effect on the listed building due to the physical works in terms of noise and vibration not only during the currency of the works, but subsequently;
- c) The benefits to VPT of the wider Victoria Interchange works (VTI2) but the consequences due to the VSU on VPT's own proposals;
- d) the adequacy of the proposed protective measures and their likely effect on the listed building during the construction period;
- e) the impact on the setting of Victoria Palace Theatre (VPT) as a listed building
- f) the likely economic consequences of the VSU on VPT
- g) summary of policy compliance of the current LUL proposals;
- h) alternative schemes
- i) whether there is a compelling case for the grant of statutory powers



10.0 The Impact of the VSU proposals on VPT

a) The effect on the fabric of the listed building through demolition, redevelopment of adjoining land;

10.01 The revised proposals for the VSU development were substituted for the earlier November 2007 proposals in August 2008. The proposals are explained in the Design and Access Statement forming part of the revised proposals and also in the Supplementary Environmental Statement (SES). It is not the intention to review the proposals in detail in this section of the planning proof but only in the context of the likely effects on the VPT. It is clear from Annex 2 Summary of the Main Modifications to the VSU scheme, which sets out the differences between the current proposals and the Order submitted on 22nd November 2007, that the Northern Ticketing Hall (NTH) has been reduced in size, and that the Cooling the Tube Project, which previously involved construction of a tunnel beneath VPT has now been deleted (formerly Work No 6). The likely impacts on VPT are nonetheless likely to be severe due to the scale of the development proposed and the long timescale that will be required due to the need to maintain the underground services during the period of the works. There is likely to be a twofold effect on VPT:

- 1) Medium term effects during the extensive works programme; and
- 2) Longer term effects, post the construction period.

Medium term timescale -Phasing of Utilities Works, Demolition and Construction Activities

10.02 At paragraph 1.1.41 of the Annexes to the SES Main Report, it is said that the award of the main construction contract is planned for late 2009. It is intended that the main construction work would start in 2010. Utilities works are programmed to start in the spring/summer of 2009, with some advance traffic management works planned for spring/summer 2009. It is envisaged that the main VSU scheme will take approximately **seven** years to construct. The works are proposed at a major London transport interchange. It is noteworthy that as it is necessary to maintain the operation of the underground railway system during the programme of works, this complex of construction activities are not restricted to a single area of the site at any one time. LUL has devised an integrated construction methodology and programme to ensure that the main transport function of the area can still operate in a safe manner. The major phases of the main works and target dates are listed and briefly explained in Tables 1-2 and 1-3 in the Annex to the SES Main Report. The programme is however subject to a caveat at paragraph 1.1.42 that in practice the main VSU works contractor may vary the way the works are implemented for practical, scheduling, environmental or financial purposes. This increases the risk and uncertainty from the perspective of VPT.



- 10.03 It will be noted that hoardings for demolition are to be erected in June 2010 and that demolition is scheduled to take place in late 2010 in the vicinity of VPT. On the assumption that the proposed timetabling of the VSU works are correct as set out in figures 6.2 14- 40 (traffic management), the works will still be in progress in August 2015.
- 10.04 From the drawings defining the extent of the revised works (Drawings VSU- 03-07 proposed works, levels 1-5) - it is clear how the southbound tunnels and Victoria Line concourse are already located at works level 5, directly below the VPT and Duke of York Public House, where new escalators will be constructed to augment the existing escalators serving the interchange concourse. Above this at level 4, a new paid area link will be constructed connecting the STH and NTH, running partly beneath VPT and the Duke of York public house. Then at levels 2 and 3, it is proposed that there will be constructed the NTH and sump just to the east of the foundations to VPT with the existing District and Circle line tunnels threading their way just to the south of the façade to VPT at level 3. At works level 1 (street level) just to the east of VPT it is proposed that there will be an escape stair lift and station vent systems. VPT is located above the much of the principal works area between the NTH and STH and above the underground rail systems.
- 10.05 Concerning the effects on the structure as a consequence of these works relates to the engineering works proposed and summarised above, as indicated by VPT's and Land Securities' engineering evidence, there is concern that the construction of the Paid Area Link and escalators beneath the rear wall of the theatre, will cause differential movement to the theatre and cause damage to the structure and fabric of the listed building. Some movement is acknowledged as being inevitable due to settlement, even if the construction method proposed by LUL is successful. There will therefore be harm to the fabric of the listed building notwithstanding the protective measures proposed.
- 10.06 It is also apparent from the evidence of Mr Wilson (OBJ21/P11 at paragraph 8.7) and Mr Chapman (for Land Securities), that if the tunnelling method proposed by LUL is less successful, then there is a severe danger that the listed building could be subject to structural failure, due to collapse of the tunnels. The construction method proposed by LUL on the this scale is I understand, untried. Mr Chapman's evidence is scathing of the approach proposed by LUL. There is a significant risk that not only would this method of construction cause damage or possibly structural failure of the listed theatre, but could cause harm and loss of life to the audience and theatre staff. The construction of the VSU on the basis proposed by LUL could, I understand put at risk the lives of approximately 1,700 persons attending or working in the theatre. This risk does not appear to have been thoroughly undertaken in preparing and evaluating these proposals and on any basis of analysis must be serious short coming.



10.07 The operation of the theatre will be seriously compromised due to the length of time that these building works will take to complete. The theatre will occupy an island position in the midst of a construction site. It will be for this period in an inhospitable location in the middle of a construction site with neighbouring properties being demolished, the public highways being dug up and tunnelling work taking place adjacent to and underneath the theatre. It is unlikely that the theatre will be capable of sustaining audiences during this extensive period of works. For considerable periods, Allington Street, upon which VPT relies for access will be closed.

10.08 It cannot in my opinion, on the basis of the evidence of Mr Chapman and Mr Wilson, be claimed by LUL that the development of the VSU can be carried out without placing the historic fabric of the listed building at risk. The onus is on the developer to prove that proposed development can be carried out without putting the retained fabric at risk. This is a requirement of the City Council's UDP. At paragraph 10.134, the guidance states:

"At all times the onus will be placed on the applicant to demonstrate that alterations, extensions and other structural works to listed buildings can be carried out without putting the retained historic fabric at risk."

10.09 The VSU proposals are plainly deficient in this respect.

10.10 *Longer term effects, post the construction period*

10.11 The longer term harm to the theatre due to the VSU proposals essentially relate to the operation of the theatre once the construction and related engineering operations have been completed. It is evident that these longer term effects, post the construction works, would not arise until some 7 years after the beginning of the VSU works. As explained by the engineering evidence on behalf of VPT, the current proposals promoted by LUL will mean that substantial underpinning of the building will be required on the Allington Street frontage and the existing rear wall of the theatre, due to:

- 1) the proposed location of the paid area link (PAL) connecting the existing South Ticking Hall (STH) with the proposed (NTH) and;
- 2) the proposed location of the new escalators connecting with the existing subterranean Victoria Line platforms with the proposed PAL.

10.12 These are numbered 4 and 3 respectively on LUL's 3D aerial view of the proposed works, reproduced as Appendix 3.



10.13 In relation to planning policy, the LUL proposals are contrary to adopted UDP policy TRANS 5 (E) as these proposals will result in the unnecessary actual and potential harm to the listed building that could have been avoided through more effective consultation with the City Council and building owners. Similarly, the proposals do not sit comfortably with STRA 29, which seeks to preserve or enhance listed buildings; perversely, LUL's proposals, on the evidence of Mr Chapman and Mr Wilson, at the lowest, place VPT in grave danger due to the tunnelling method proposed, when alternative well tried and tested methods are available that I am advised would significantly avoid harm to the listed building. In order to "...*minimise the impacts on the various elements of the historic environment and their settings*" in accordance with the guidance contained in PPG15, (paragraph 5.2), it is clear that LUL have failed to heed this advice in considering methods of construction, which on the advice of Mr Wilson (OBJ21/P11 at paragraph 10.7) and Mr Chapman, would not be minimised by the construction route and tunnelling method devised and promoted by LUL. The design of the LUL proposals for the PAL and escalators in the vicinity of VPT could, on the evidence of Land Securities' and VPT's engineering witnesses, be much improved and could avoid the significant harm and risks identified in the evidence of Mr Chapman, (paragraphs 10.8 10.9), Mr Wilson and Mr Greer, (paragraphs 10.15-10.16).

10.14 PPG15 also considers and anticipates the competition and conflict between existing historic building and proposed transport development. At paragraphs 5.2 – 5.3, PPG15 states:

"Major new transport infrastructure developments can have an especially wide-ranging impact on the historic environment, not just visually and physically, but indirectly, for example, by altering patterns of movement or commerce and generating new development pressures or opportunities in historic areas. Local highway and planning authorities should therefore integrate their activities and should take great care to avoid or minimise impacts on the various elements of the historic environment and their settings.

The Secretaries of State also attach particular importance to early consultation on traffic management and highway maintenance schemes, and associated development proposals which would affect listed buildings or conservation areas or parks, gardens or battlefields and their settings. Local highway and planning authorities should take great care to assess the impact on existing roads of new projects, eg for the rerouting of traffic or for pedestrianisation. They are urged to seek the advice of English Heritage, where appropriate, before determining any such proposals."

10.15 At paragraph 5.3 of PPG 15, it will be noted that both the Secretaries of State attach particular importance to early consultation on the likely effects of transport schemes upon listed buildings and their settings and the likely impacts due to such proposed development. From the evidence of Dr Loveday, it is clear from his conclusions that these proposals will adversely affect the operation and use of theatre due to the servicing requirements to Allington St which will harm the to the use of the theatre. I note from PPG 15 paragraphs 5.8 – 5.10, schemes promoted under the Transport and Works Act 1992 which involve works to listed buildings are the subject of parallel applications for planning



permission for listed building consent and therefore the policy guidance under PPG 15 will be applicable.

b) The effect on the use listed building due to the physical works in terms of noise and vibration

- 10.16 I am advised that the consequence of these works as proposed will be to cause a greater level of noise and vibration experienced within the theatre in addition to the acknowledged harm that these works will cause to the theatre due to differential settlement between those parts of the theatre that are to be underpinned and those areas which will remain without change to the building's existing foundations. My understanding from the evidence of VPT's engineers will mean that the extent of the additional noise and vibration transferred through the altered theatre structure due to the operation of the railway will be amplified. At present some noise and vibration is caused principally due to the proximity of the southern running tunnel of the Victoria Line. As a consequence of LUL's proposed jet grouting and associated tunnelling works, I am advised that the noise and vibration will be exacerbated. There is likely to be, on the evidence of Mr Greer (OBJ21/P4 paragraph 8.9) unacceptable levels of noise and vibration experienced in the theatre auditorium caused from trains in both the north and southbound running tunnels. It is likely that the cumulative effects of these works and the increased frequency from 28 to 33 trains per hour, coupled with faster acceleration and deceleration of trains will further adversely impact on the theatre. This will adversely affect the quality and acceptability of the theatre as an appropriate venue for the performing arts as identified by Mr Satow (OBJ21/P6 paragraph 5.3.1.1) and Mr Earl (OBJ21/P2 paragraph 11.1)
- 10.17 The inevitable long term consequence, caused by these works, as currently proposed, is that the theatre would be perceived as a less attractive and possibly an unacceptable venue. Were this to be the case, VPT would therefore be unable to attract either audiences for, or promoters of theatrical productions. In that event the theatre would inevitably close. This in turn would mean that in order to conserve the fabric, there would need to be found some economically viable alternative use to which the building might then be put, which would generate sufficient revenue, in the absence of any enduring subsidy, that would create revenue or a sinking fund sufficient to provide for the long term maintenance, management and conservation of the theatre as a listed building. It is not clear to me whether an alternative use could be attracted to the building, a purpose built theatre where people assemble and congregate for a purpose, that would be sufficiently attractive and which would also create a sufficient and long term financial surplus to conserve the fabric of the building. Undoubtedly, on the assumption that the theatre were to fail due to the effects of noise and vibration, there is a very significant risk that no other use could be found to which the theatre could be put without compromising its built form.



- 10.18 In relation to planning policy, the likely consequences associated with LUL's proposals as to noise and vibration are contrary to advice on this matter at all spatial scales. The theatre is obviously a noise sensitive land use. The level of consultation that is envisaged in paragraph 14 of PPG 24 has not materialised in so far as VPT would anticipate this to have taken place and the concerns of VPT properly considered. If it had, on the evidence of Mr Greer and Mr Chapman, it is likely that an alternative method of construction that would offer greater mitigation would have been proffered by LUL and this may have resulted in a different range of schemes being tested through the environmental assessment that has been undertaken and a different preferred option. The use of engineering solutions as advocated in PPG24, paragraph 13 to mitigate noise transmission and the protection of noise sensitive buildings by improving sound insulation has not been adequately considered by the proposed application of the jet grouting method proposed by LUL on the evidence of Mr Greer.
- 10.19 Also, contrary to the advice in PPG 24, paragraph 14, there has not been adequate consultation with VPT in relation to acceptable mitigation measures and for these to have been incorporated into the engineering design for which approval is now sought.
- 10.20 PPG 24, also emphasises the relevance of Environmental Assessment in considering noise impact of proposals. The adequacy of the LUL environmental assessment in relation to noise has been considered by Mr Greer (paragraphs 8.3 and 10.1) and found inadequate.
- 10.21 It will be apparent to London Underground, being part of the GLA "family", the importance placed by the London Mayor in the CLP in relation to noise in the context of sustainable design and construction. It would appear that the design of the VSU in so far as it is likely to impact on VPT falls well short of Policy 4A.3 of the CLP. This places a burden on developers, including LUL, to meet the highest standards of sustainable design and construction by reference to including measures to reduce the adverse effects of noise. If the highest standards are to be achieved as required by this policy, then these should have been properly assessed on that basis, with the appropriate weighting require to meet this demanding requirement. Other factors, including cost, would logically require a lesser weighting under such an assessment. It would not appear that this is the approach that has been adopted by LUL in the design of these proposals.
- 10.22 I gain further support from my opinion that the Mayor's policies in the CLP have not been adequately considered by LUL in formulating their proposals by reference to Policy 4A.20. This policy dealing with reducing noise and enhancing soundscapes, plainly requires that noise should be reduced in new proposals by:
- minimising the existing and potential adverse impacts of noise on, from, within, or in the vicinity of, development proposals



- separating new noise sensitive development from major noise sources wherever practicable
- supporting new technologies and improved practices to reduce noise at source, especially in road, rail and air transport
- reducing the impact of traffic noise through highway management and transport policies (see Chapter 3C)
- containing noise from late night entertainment and other 24-hour activities, and where appropriate promoting well-managed designated locations (see Chapter 3D)
- identifying areas of relative tranquillity, which it is intended should be protected or enhanced.

10.23 The first four bullet points in this policy above are applicable to the potential impact of noise by the VSU scheme on VPT. It is clear from the evidence of Mr Greer that LUL has failed to adequately mitigation measures for airborne and ground borne sound.

10.24 In considering the Noise policy in the adopted Westminster City Council UDP, Policy ENV6; Noise Pollution, the noise reduction policies of the CLP are similarly applicable to development proposals. This policy provides guidance to developers that the City Council will:

1) require design features and operational measures to minimise and contain noise from developments, to protect noise sensitive properties

2) where developments adjoin other buildings or structures, require applicants to demonstrate that as far as is reasonably practicable developments will be designed and operated to prevent transmission of audible noise or perceptible vibration through the fabric of the building or structure to adjoining properties

3) require a noise and vibration assessment report where development or change of use could affect noise sensitive properties

10.25 Considering these first three requirements of this policy, it is clear on the evidence of Mr Greer, that the first point has not been met and VPT, a noise sensitive property will not be adequately protected. Linking this policy together with noise related policies of the CLP, it is clear that LUL have not applied the highest design standards to reduce the impact of noise in the design of their proposals to the noise sensitive theatre.

10.26 In the application of this policy, LUL has not demonstrated that as far as is reasonably practicable this development has been designed and would be operated to prevent transmission of audible noise or perceptible vibration through the fabric of the structure to VPT an adjoining property as evidenced by Mr Greer. Certainly, the approach advocated by the City Council at paragraph 9.76 of the UDP, that



through careful design of buildings, this can do much to reduce noise disturbance and that the City Council will require design and operational measures to minimise and contain noise from developments. This approach has not been satisfactorily followed by LUL in relation to this policy.

10.27 Concerning the structural transmission of noise and vibration, paragraph 9.79 of the UDP expects:

“In all developments the City Council will require that no audible noise or perceptible vibration will be transmitted through the building fabric to adjoining properties. This will require design features to prevent or inhibit the transmission of vibration and noise through the structure.”

10.28 It is clear from the evidence of all parties, that the above requirement will not be met by LUL’s proposals in relation to the impact on VPT.

10.29 Concluding the section on noise, it is clear that the VSU scheme is contrary to planning policy contained within PPG 24, the CLP and Westminster City Council’s adopted UDP and the expectations of the adopted planning brief concerning the effect on VPT.

10.30 It should also be appreciated that the VSU proposals is one component in a much larger scheme for the improvement of the underground railway system at Victoria. It would appear that in addition to the effects of the VSU works, there will be further engineering operations of a substantial and significant scale planned to be executed subsequently over many years known as the Victoria Line Upgrade (VLU). These works include, as I understand matters, improvements to lengthen platforms to facilitate longer trains. LUL has indicated in its, “Concise Statement of the aims of the proposal” that VSU also enables realisation of Victoria Line Upgrade (“VLU”) project benefits at Victoria station, as a key part the Investment Programme. The VLU project is intended to provide passengers with safer, more reliable and quicker journeys as *“47 new, more capacious trains will be brought onto the Victoria line between 2009 and 2013 and improved track, signalling and control systems will be put into place, allowing increased train frequency and faster journeys”*.⁷

10.31 Thus, even if the theatre were to survive physically during the extensive work programme for the revised VSU works; in itself a dubious assumption on the evidence of Mr Chapman, then the effect of the noise and vibration anticipated from the operation of the Victoria Line, post the works and without further mitigation, will on the evidence of Mr Greer, cause further and un-necessary harm to the theatre.

⁷ Transport and Works Act 1992 The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 Rule 10(2)(c) The London Underground (Victoria Station Upgrade) Order: Concise statement of the aims of the proposals (CD VSU.A4)



c) The benefits to VPT of the wider Victoria Interchange works (VTI2) but the consequences due to the VSU on VPT's own proposals

- 10.32 It will be appreciated that the area to the north and west of the theatre will be subject to the proposals submitted to Westminster City Council in September 2008 and described in the evidence of Ms O'Shea and Mr Bullock.
- 10.33 VPT regards the proposals made by Land Securities forming VTI2 as being generally beneficial. Whilst plainly there will be some impact during the construction works, these are unlikely to cause significant disturbance to VPT's use of the theatre, as these works will be set apart from the theatre and thus can be distinguished as causing considerably less harm than those proposed by LUL by way of the VSU scheme.
- 10.34 On the basis that the Land Securities proposals are approved as submitted, then as part of the wider comprehensive redevelopment of land to the rear of the theatre and land to the west of Allington Street, it is proposed that VPT would benefit through the gift of a 6 metre strip of land (as overlaid on the existing sections in the plans contained in Appendix 3). As will be evident from the Victoria Area Planning Brief, adopted 2006, (paragraph 1.5) since at least that time, it has been Westminster City Council's policy, that in order to protect the interests of VPT and with the acceptance of this policy by Land Securities, there is an expectation that there would be a transfer of land to the theatre to enable the construction of a fly tower to assist in the provision of sets for performances that would enhance the theatre and the theatrical experience and thereby allow the theatre to stage more varied performances than at present. This increased flexibility would assist the theatre and help safeguard its future, which again would be consistent with Westminster City Council's recent theatre-land policies, in addition to adopted UDP policy, TACE 6 and the related explanatory memorandum at paragraphs 8.59 – 8.60.
- 10.35 Moreover the Victoria Area Planning Brief, at paragraphs 5.29-5.31 acknowledges the need to expand and improve VPT to provide for a previously envisaged extension in connection with the redevelopment of Elliot House.
- 10.36 In the event that LUL's VSU proposals were to be allowed, then due to the location of the additional escalators, as currently proposed, it would not be possible to construct the planned extension to the theatre. Land Securities' proposed transfer of land to VPT for the purpose of constructing the fly tower would then be in vain. On the evidence of Mr Wilson and Mt Satow, due to the proposed jet grouting and LUL's proposed location for the escalators below the land immediately to the rear (north) of the



theatre, LUL's VSU proposals would compromise VPT's proposed improvements. This would be to the detriment of the theatre. Therefore the design of the escalators proposed by LUL in its current proposals would be contrary to the objectives of the adopted Planning Brief as the planned improvements acknowledged and expected in the City Council's adopted planning brief could not be delivered. This is a major short coming of the LUL proposals but which is capable of being remedied through redesign.



d) The adequacy of the proposed protective measures and their likely effect on the listed building during the construction period

10.37 LUL is not yet in a position to assert the full extent of the protective measures that may be necessary and what these will encompass in order to properly protect VPT from demolition and the associated works that would be necessary to conserve the theatre. This is because until such time as full surveys have been prepared in relation to VPT, its engineers are of the opinion that the applicant is not in a position to provide a clear assessment of the engineering and associated works that may be required to safeguard this important heritage asset.

Impact on VPT

- 10.38 Mr Greer, Mr Chapman and Mr Satow have demonstrated that the proposed engineering works associated close to and under parts of VPT could compromise the integrity of this listed building and are likely to adversely affect both the short and longer term operation of the Theatre through the transfer of noise and vibration following the completion of the works, sufficient to jeopardise the existence and operation of the Theatre.
- 10.39 Further concerns have arisen in the light of the applicant's statement in Appendix 3 to this application. As previously stated in my evidence, I do not consider that the design of these proposals has been adequately considered as on the evidence of Mr Chapman, Mr Greer, Mr Wilson and Mr Satow, the impact of the VSU proposals on the theatre will not be minimised as claimed in the penultimate paragraph of Appendix 3 by LUL.
- 10.40 There needs to be a complete mitigation strategy in place before seeking an application for listed building consent for demolition and the associated works comprised in this application. It is an unsatisfactory and unacceptable position for the promoter to seek this permission there being a complete mitigation strategy in place which is acceptable in planning policy terms and which meets the reasonable expectations of the owners of VPT.
- 10.41 The application is at the very least premature, since until LUL's surveys have been undertaken. The theatre would then need a reasonable opportunity to consider such proposals in the light of its obligations to conserve the heritage asset comprising this theatre. The theatre would then need to be satisfied that such proposed works would not harm the proper functioning of the theatre, during the preparation for the engineering operations, the undertaking of these works and the subsequent position once the works have been completed. Having regard to the evidence of Jon Satow in section 6 of his



proof, it is clear that the mitigation measures are not sufficient to protect the theatre. He calls for example, for further surveys to be undertaken in order that the ornate plasterwork, which is part of the charm of this theatre, can be properly conserved and the appropriate mitigation strategy devised to safeguard this aspect of the theatre. Mr Satow also advises in this section of his proof that further surveys are required to assess the likely effects of jet grouting proposed in connection with establishing the likely extent to which sound and vibration may be transmitted between the railway and associated works and the theatre.

- 10.42 The applicant has not undertaken sufficient consultation with VPT in order for LUL to understand the theatre's operational needs during the construction of the VSU and the needs of the theatre thereafter. Mr Satow (OBJ21/P6) demonstrates that LUL has not prepared adequate proposals that demonstrate that effective mitigation measures have been considered in the light of the theatre's reasonable concerns in relation to the proposed works and the likely effects on the theatre during construction and the longer term effects that are likely to be suffered as a consequence of these works. Mr Satow states that the approach of LUL as being complacent (7.0.0.9). I concur with that view.
- 10.43 In considering the planning policy implications associated with the application for listed building consent, these have already been considered in my evidence above in this section in relation to the effects of the main works on the theatre. Also of relevance are the consequences of the proposed demolition in the absence of any detailed proposals for the replacement of the buildings that will be demolished as part of this planning application. The proposal that the adjoining site will be left as an open area would be an incongruous feature in the townscape and would cause harm to the setting of the theatre an important landmark in Westminster and a listed building. This would be entirely contrary to policy as I set out in the next section of my proof where I consider the policy implications of the impact of demolition and LUL's approach to leaving the neighbouring site cleared.
- 10.44 Since preparing the Rule 6 Statement in connection with the protective works proposals, Land Securities has submitted its proposals for VT12. It is not clear at this stage whether these three linked planning applications will be approved by the City Council or other decision maker. Even if all three are permitted, there is no guarantee that all will be implemented. Thus it cannot be claimed that there will necessarily be an acceptable planning solution to the matter of replacement buildings within the setting of the listed theatre at this stage.
- 10.45 To conclude this section, the "protective measures" proposed by LUL are insensitive and will inevitably cause unacceptable harm to the structure and particularly to the setting of the listed building.



e) Impact on the setting of Victoria Palace Theatre (VPT) as a listed building.

- 10.46 The relevant policies relevant to a consideration of the effects of the VSU proposals on the setting of VPT are set out in national planning policy in PPG15 and locally in the City Council's adopted UDP. These are set out in section 8 of my proof. I now examine the extent to which the VSU proposals satisfy this policy guidance. As will be seen from section 8 of my proof, guidance on the effect of the impact of the setting of listed buildings is subject to development control through the guidance in:
- PPG15 – paragraphs 2.12 – 2.17 and 5.2- 5.3; and
UDP policy – STRA29, DES 1 and DES 10.
- 10.47 The VSU proposals suffer a further serious weakness to the extent that the most recent proposals submitted in August 2008 propose substantial demolition adjacent and close to the VPT site, but without there being any clarity to what might replace those buildings. The proposals fail to recognise the importance of VPT in the townscape and that it is not only listed but also a “Landmark” building, defined in the Victoria Area Planning Brief. John Earl in his evidence (at paragraphs 8.7 – 8.8), expresses the need for the theatre to be buttressed in the streetscape and that it is essential that there is a natural and reasonable expectation for there to be detailed designs for replacement buildings approved prior to a decision to allow the demolition of buildings within the setting of VPT and moreover that the replacement buildings should be of adequate quality to enhance the setting of the theatre. John Earl's view above is in accord with policy guidance within PPG 15, DES 1 and DES 10.
- 10.48 In particular the specific advice in the City Council's UDP in DES 10 (D) explaining the policy towards development within the immediate or wider setting of listed buildings is that planning permission would not be granted where development would adversely affect that setting. It is plain that in the absence of other sensible alternatives, the VSU proposals would create a void in the streetscape in the vicinity of VPT which would create harm to the setting of the listed building in the expert opinion of John Earl. I also concur with that view. There should be comprehensive development proposals prepared and linked to the VSU proposals in order to minimise uncertainty in order that if the VSU works are approved, they may be undertaken on the reasonable expectation that once the related surface land above the solum becomes available, there is a reasonable expectation that not only will there be redevelopment shortly thereafter, but that it will be of a kind and quality that will contribute to the setting of VPT, an important landmark and listed building. This would satisfy policy in PPG 15 and UDP policy in DES 10 (D), as well as meeting the wider design expectations of the City Council contained in DES 1. As I have explained in section 8 of my proof, setting out the relevant policy background to the VSU



proposals, the explanatory memorandum to the UDP at 10.133 – 10.134 gives further guidance on what is expected of developers in making planning applications that will affect the setting of listed buildings. The VSU proposals will be detrimental to the setting of the listed building; it is a matter that was considered by LUL on an equally unsatisfactory basis in its earlier proposals for the VSU in November 2007. At that time outline proposals were made by LUL, now the only indication of how the cleared site might look is by an illustrative sketch in the Supplemental Environmental Statement. In considering this proposition with the guidance in PPG 15, paragraph 2.12 states:

“It is generally preferable for both the applicant and the planning authority if related applications for planning permission and for listed building or conservation area consent are considered concurrently. Authorities are required by section 66(1) of the Act, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses. It is unlikely that they will be able to do so effectively unless the planning application is accompanied by a listed building consent application (where the development in question requires one) or at least contains an equivalent amount of information. If an authority is asked to consider a planning application in isolation, a decision on that application cannot be taken as predetermining the outcome of a subsequent application for listed building consent.”

- 10.49 I consider that in this case, due to the manifest uncertainty regarding what might replace the demolished buildings comprising the setting of VPT, not only is this an oversight of the LUL proposals but it is a failure of the SES. Although an application for listed building consent has been made, this relates solely to works that are intended to safeguard the fabric of the VPT; they do not extend to safeguarding the building's setting,
- 10.50 The proposed demolition of buildings by LUL without clarity as to what might replace them, not only affects the setting of VPT but also has a potentially harmful in terms of impact on conservation areas in Victoria. Whilst VPT and the adjoining Victoria St and Bressenden Place properties are not in conservation areas, they are located opposite the Westminster Cathedral conservation area. In terms of the need in relation to the further advice in PPG15, paragraph 2.12 to “*pay special attention to the desirability of preserving or enhancing the character or appearance of that area*” this cannot be said to have been satisfactorily achieved unless there is clarity as to the proposed development which will replace buildings to be demolished. PPG15, paragraph 2.12 advises that “*In the case of unlisted buildings in conservation areas, the Courts have held that consent for the demolition of a building may involve consideration of what is to take its place (see paragraph 4.27).*”



10.51 In connection with LUL's proposals no judgment can be made as to the quality of the building that might be permitted under the TWA proposals where demolition is proposed within the setting of VPT. My opinion on this is reinforced by paragraphs 2.14 - 2.17 of PPG 15, which seeks that new development should be carefully designed to respect the setting of listed buildings. This guidance also recognises at paragraph 2.16, that:

"2.16..... The setting is often an essential part of the building's character, especially if a garden or grounds have been laid out to complement its design or function. Also, the economic viability as well as the character of historic buildings may suffer and they can be robbed of much of their interest, and of the contribution they make to townscape or the countryside, if they become isolated from their surroundings, eg by new traffic routes, car parks, or other development."

10.52 In connection with these proposals, VPT is undoubtedly the most prominent and striking building on the north-eastern side of Victoria Street. It is reinforced in its setting by the Duke of York public house adjoining it at the junction of Allington Street. Although 124-126 Victoria Street and 3-11 Bressenden Place which plainly form part of the theatre's setting are of more limited architectural value they are nonetheless subordinate to the theatre and do not detract from its setting. In the medium term, with the present buildings at 124-126 Victoria Street and 3-11 Bressenden Place as early as next year, were these proposals to be approved, there would be a risk that with the VSU proposals that a less than satisfactory or harmful development in relation to VPT, might be constructed at this location some point in the future causing long term harm to the setting of VPT.

10.53 A precautionary approach should be adopted whereby the works of demolition should not be approved until there is clarity as to what will replace them and that adequate consideration has been given to the likely effects on the setting of VPT and the effects on the conservation area opposite. Such an approach would be consistent with further advice contained in the UDP explanatory memorandum at paragraph 10.144:

"Setting of a listed building is also of great importance and should not be adversely affected by unsympathetic neighbouring development. Development which adversely affects the setting of a listed building or an important view of a listed building will not normally be permitted...."

10.54 Westminster City Council's UDP (adopted January 2007) in its strategic policies similarly seeks to reinforce national planning guidance in relation to listed buildings and the importance of preserving or enhancing their setting. STRA 29 is important in this regard:

POLICY STRA 29: LISTED BUILDINGS, HISTORIC PARKS

**AND GARDENS, AND ARCHAEOLOGY**

It is the City Council's aim:

(A) To preserve or enhance listed buildings and their settings, historic parks and gardens and their surroundings and other features of special or local architectural, historic or ecological interest

(B) To investigate, record and protect Westminster's archaeological heritage.

- 10.55 The explanatory memorandum at paragraph 151- 152 recognises the intrinsic value of this historic townscape and the fact that the resulting high quality environment is a major factor in Westminster's continuing economic success. The City Council is aware that the prestige attached to a West End address is among the city's greatest assets and is largely dependent on the high quality environment. Applying this approach to the VSU proposals, there is a significant risk that if these were to be allowed in their current form this would result in an erosion of the qualities of the existing historic townscape, which makes Westminster such an attractive and valued location.
- 10.56 In explaining how Westminster City Council operates this policy in paragraph 152, the explanatory memorandum advises that the City Council will promote the highest standards of sustainable design principles in new developments and in alterations and additions to existing buildings. It will ensure that all developments, particularly with regard to bulk and height, make a positive contribution to the environment, retaining the distinctiveness of different areas and relating well to their surroundings. In relation to the current VSU proposals, it cannot be said that on the basis of the sketch proposals to illustrate how adjoining development might appear, that STRA 29 would be met, indeed these proposals fall well short of the City Council's reasonable expectations.
- 10.57 To conclude this section, there is therefore a reasonable expectation that there should be detailed proposals for the redevelopment of the land that is being acquired and how this might relate to the wider townscape comprising the Westminster Cathedral conservation area, in addition to the heritage asset comprising the theatre. LUL have chosen not to seek approval for development that would satisfy the policy requirements of PPG15 or the adopted UDP concerning the impact of development on the setting of a listed building. Consequently I am of the opinion that their proposal is contrary to policy concerning the effect on the setting of a listed building.



f) The likely economic consequences of the VSU on VPT

- 10.58 In terms of the advice in PPG15 on economic prosperity and stewardship, (paragraphs 1.4 – 1.6), there are further deficiencies in the approach advanced by LUL with their proposals for the VSU. There is grave concern that in the medium term, were these proposals to be allowed, the effect of the works at the surface and need for hoardings, traffic management arrangements, noise and disturbance would be such that VPT would no longer be an acceptable venue for audiences or theatrical promoters and as a consequence it would simply fail as an operating theatre. The timescale of the works is so long and by LUL's own admission, it is necessary to phase the works carefully to ensure that the transport system can operate effectively throughout the works that inevitably, based on the current proposals, if they were to be implemented then the this theatre would simply fail. Due to the design of the building, it is not feasible to consider other economic uses to which it might be put in the medium term during these works.
- 10.59 VPT is an important cultural resource in "theatreland" as outlined by John Earl in his evidence. PPG 15, in paragraph 1.5 recognises that conservation is also compatible with growth and development of tourism.
- "..... The historic environment is of particular importance for tourism and leisure, and Government policy encourages the growth and development of tourism in response to the market so long as this is compatible with proper long-term conservation....."*
- 10.60 Although it is accepted that the VSU proposals in themselves will make a contribution to the economic well being of the capital and assist the encouragement and growth of tourism, nonetheless the design of the current proposals is likely to cause serious harm to the operation of the theatre to the extent that it is unlikely to remain viable, if the works, as proposed are implemented. Mr Greer (OB21/P4) is clear in his evidence at paragraph 7.7 that without mitigation in excess of that proposed by the VSU, "quite simply, they would stop productions".
- 10.61 Mr Satow's evidence (OB21/P6) explains the operation and requirements of the theatre and the needs for modernisation and extension of VPT. It is evident that to satisfy the needs of audiences and producers, improvements to the theatre are necessary as explained by Mr Satow in section 2 of his evidence. Application to undertake works to improve the theatre were made in June 2008 and validated in September by the City Council as planning authority as further stated by Mr Satow at paragraph 3.7 of his evidence and further detailed in section 3 of his evidence. In section 5 of his proof Mr Satow explains that the expansion plans for the theatre have been based upon the expectation that there will be a transfer of land from the adjoining land owner to the theatre as part of a planning agreement, envisaged for some time and anticipated in the Victoria Area Planning Brief (Adopted April



2006). It is further evident from the evidence of Mr Wilson, that were the VSU proposals to be implemented, then the location of the escalators serving the proposed NTH and the Victoria Line Station platform would preclude the development proposed by VPT as these would be located to the rear of the theatre immediately beneath the proposed new fly tower and would compromise that development. Thus even if the theatre, or some other use were able to withstand the noise and vibration anticipated by Mr Greer, in his evidence, the theatre would be incapable of being extended. I am advised that the loading capacity of the land above the escalators would not support significant development and so this land to the rear of the theatre which offers potential for expansion of VPT would then effectively be sterilised.

- 10.62 Whilst the construction works are being undertaken, due to the LUL proposed location of the PAL beneath Allington St, this highway will be closed to facilitate the LUL construction works nearby. The closure will affect the servicing of the theatre and means of exit for theatre audiences. It is not clear whether the theatre could function satisfactorily during this period. With the noise and vibration anticipated during the construction of the VSU on the basis of the LUL proposals, there is considerable doubt whether the theatre could continue to operate. This is of course independent of the safety risks and concerns for the structural integrity of any tunneling and the theatre arising from the construction method promoted by LUL, that I have considered earlier.
- 10.63 The theatre therefore faces a bleak future if these proposals are allowed. It is likely that it would prove unattractive as a venue that neither producers nor audiences would find it acceptable. In that event there is a serious question as to what might be its future use. Again ignoring the severe risk, as I understand matters of structural failure due to the proposed alignment of the PAL and the tunneling construction methods coupled with the inadequacies of the protective measures, and making the assumption that the theatre will survive the VSU works, it is not clear for what purpose it might be used on the basis that noise and vibration make the building untenable as a theatre. A pop concert venue has been suggested, but these facilities are already available throughout metropolitan London at larger venues such as the O2 centre and such a use is unlikely to be appropriate on amenity grounds in this part of London where there are already proposals being advanced by Land Securities for a comprehensive redevelopment of for residential and commercial uses.
- 10.64 There is a serious risk that as a direct consequence of the VSU proposals that the theatre will cease to operate and that it could prove very difficult to find an alternative use that would not only be able to use the listed building commercially, but also create sufficient revenue to be able to maintain and conserve the structure and fabric of the building in the longer term. It is not possible to contemplate any form of enabling development that might be considered in similar situations to assist bringing about a cross subsidy as there would be no additional land available, other than perhaps the 6m strip, but even this



would be compromised for future development due to the lack of capacity to accept the loads associated with new development. In any event it would be too small for independent development and is backland.

- 10.65 The VSU proposal is therefore likely to cause the financial failure of the current use. That in itself may not normally be an adequate planning reason to dismiss the proposal, however due to the fact that the theatre is listed and that there is an obligation for its owner to conserve it, planning policy within PPG 15 is relevant. At PPG 15, paragraph 3.8, this guidance cited earlier in my evidence in section 8, states:

“3.8 Generally the best way of securing the upkeep of historic buildings and areas is to keep them in active use. For the great majority this must mean economically viable uses if they are to survive, and new, and even continuing, uses will often necessitate some degree of adaptation. The range and acceptability of possible uses must therefore usually be a major consideration when the future of listed buildings or buildings in conservation areas is in question”.

- 10.66 Accordingly, I consider that there is a strong likelihood that if the VSU scheme is allowed, VPT will not be viable as a theatre and there is considerable uncertainty as to whether a viable alternative use might be found for it. I conclude this section by finding that there is a high risk that the theatre will fail as a consequence of the VSU proposals and that the range and acceptability of possible uses, acknowledged in PPG 15 as usually a major consideration when the future of listed buildings are in question, has not been adequately considered by LUL in preparing its development scheme.

g) Policy compliance of the current LUL proposals

- 10.67 In the preceding sub sections of this chapter, I have considered LUL's VSU proposals against the relevant planning policies, nationally, sub-regionally and at the local levels of the likely effect of these proposals on

- a) *The effect on the fabric of the listed building through demolition, redevelopment of adjoining land.*

The following policies would be contravened by these proposals;

- PPG15, (paragraph 5.2)
- UDP policy STRA 29,
- UDP policy TRANS 5 (E)



- b) *The effect on the listed building due to the physical works in terms of noise and vibration not only during the currency of the works, but subsequently;*

The following policies would be contravened by these proposals:

PPG 24 paragraph 14
CLP Policy 4A.20
UDP Policy ENV6

- c) *The benefits to VPT of the wider Victoria Interchange works (VTI2) but the consequences due to the VSU on VPT's own proposals;*

The following policies would be contravened by these proposals;

UDP policy, TACE 6
Victoria Area Planning Brief, adopted 2006, (paragraphs 1.5 and 5.29-5.31)

- d) *The adequacy of the proposed protective measures and their likely effect on the listed building during the construction period;*

The following policy advice would be contravened by these proposals;

PPG 15

- e) *The impact on the setting of Victoria Palace Theatre (VPT) as a listed building.*

The following policies would be contravened by these proposals;

PPG15 – paragraphs 2.12 – 2.17 and 5.2- 5.3;
UDP policy STRA 29,
UDP policy DES 1
UDP policy DES 10.

- f) *The likely economic consequences of the VSU on VPT*

The following policies would be contravened by these proposals;

PPG15, (paragraphs 1.4 – 1.6)
PPG 15, (paragraph 3.8)



Victoria Area Planning Brief, adopted 2006.

10.68 In analysing each sub section I have concluded that there are serious policy contraventions in relation to each of these important planning considerations and development issues. Taken cumulatively and considering the expert evidence of others, I consider that LUL has seriously misdirected itself in its approach to scheme selection through its environmental statement and supplemental environmental statement and lack of adequate policy consideration towards the protection and conservation of Victoria Palace Theatre.



11.0 Alternative schemes

- 11.1 All objectors to this inquiry have very little time to consider the likely impact on the revised proposals submitted by LUL as the revised proposals were only submitted in August this year. VPT's multi-disciplinary team of engineers and architects have carefully considered these proposals and as has been demonstrated in the evidence of Dr Loveday, Mr Greer, Mr Wilson, Mr Satow and Mr Earl, considerable weaknesses have emerged in so far as the LUL proposals are concerned with reference to the theatre.
- 11.2 It will also be evident that the best solution to protect the theatre, as thus far identified by LUL, is Option 2B/C, as this directs the Paid Area Link (PAL) tunnel away from the listed building. Mr Geer reaches this conclusion in examining the other options examined by LUL. Indeed he forms the opinion that Options 3A, 3B, 4A, and 4B link 1 and 5 are all better than LUL's selected option as they would reduce the impact of noise and vibration on the auditorium (Greer 10.14).
- 11.3 It is now however common ground between the engineers on behalf of Land Securities and Victoria Palace Theatre that the preferred option for the PAL is Option 1A, shown in the evidence of Land Securities (OBN J3/P3, exhibit 12). This option, which would not involve jet grouting, would not cause additional noise and vibration to the extent of LUL's existing proposal and Mr Greer believes the noise impact would be similar to Options 3A, 3B, 4A, and 4B link 1 and 5.
- 11.4 There is also the need to relocate the escalators away from the rear wall and foundations of the theatre. Mr Satow has identified that the escalators have migrated towards the theatre when comparing LUL's drawings in the SES, Technical Appendix C, Appendix B, Part 1. (see Satow Appendix H). Mr Satow demonstrates that the more northerly location of the escalators is the same for all of the options considered by LUL at that time. This is also shown clearly, again as identified by Mr Satow on Drawing Number 1, from the SES Planning Direction Drawings (Satow Appendix H).
- 11.5 Were LUL to prepare a revised proposal which incorporated:
- the alignment and construction method as suggested by LUL; and the more northerly location of the escalators as previously indicated by LUL,
 - then there would be a reasonable prospect that such a design solution would be acceptable to LUL and I understand Land Securities.



- 11.6 At the time of writing this proof, Land Securities and VPT have written to Mr G King at Westminster City Council explaining their common position in relation to these proposals to seek whether the City Council would be likely to support such proposals. The letter has also been forwarded to English Heritage for their consideration and as a means of trying to secure an alternative acceptable solution that would safeguard the heritage interest, but also facilitate the wider planning, engineering and development objectives of Westminster City Council, English Heritage, Land Securities and the Victoria Palace Theatre. A copy of the letter is included in Appendix 10 to my evidence. In order for the alternative design, proffered by LS and VPT, to be fully considered in terms of planning policy, it would need to be worked up in greater detail and tested against other options formally by way of a thorough examination and analysis as part of a further environmental assessment. This would need to be subject to design development by LUL in association with other experts on behalf of VPT and Land Securities.
- 11.8 As part of such an assessment there would also need to be prepared, detailed proposals for the redevelopment of the properties within the setting of VPT. This would naturally require a further application for listed building consent to be made to Westminster City Council. Those proposals might be the recently submitted proposals by Land Securities. In that event, such revised proposals by LUL would provide greater certainty of delivering an acceptable long term solution by providing detailed designs for the replacement buildings for those to be demolished as part of the VSU.
- 11.9 I consider that this approach would offer the opportunity of meeting VPT's objections to the current scheme and as I understand it, those of Land Securities.
- 11.10 In terms of planning benefits, this alternative proposal would not only safeguard the structure and fabric of the listed building but, importantly in planning terms, would enable much need land to be made available in order that the theatre extension could be constructed, (subject to the grant of planning permission and listed building consent). This would enable not only the objectives of VPT to be met, but also the policy expectation within the City Council's Victoria Area Planning Brief, of delivering improvements to the theatre, aided by the planning system.



12.0 Whether there is a compelling case for the grant of statutory powers

- a) Whilst I accept that there is a need to provide public transport capacity and improved quality of accessibility to the Victoria Line at Victoria Underground Station, this objective has to be appropriately examined against other relevant planning policy considerations.
- b) There are simply too many planning policy compliance failures associated with LUL's proposals for the VSU to be acceptable, in addition to other significant engineering and other risks. These may be summarised as:
- 1) During construction.
 - Structural damage due to settlement, or possibly a collapse of the theatre (this has not been adequately assessed by LUL (see the evidence of Mr Chapman and Mr Wilson);
 - Unacceptable noise and vibration (see Mr Greer)
 - Disruption of access and transportation (see Mr Loveday)
 - 2) Following construction of the VSU; (assuming that the effects during construction leave the VPT as a working theatre)
 - Unacceptable noise and vibration (see Mr Greer);
 - Compromising the future development of VPT (see Mr Satow and Mr Wilson)
 - Harm to the setting of the listed building due to visual impact of the VSU (see Mr Earl)
 - Compromising the future use of VPT as a theatre and thereby raising the prospect of failure due to lack of viability.
- c) It appears that there is a better solution that is available to LUL and could be brought forward quickly in association with Land Securities and VPT, which would avoid the planning harm and other risks of the current VSU scheme.
- d) Accordingly, I consider that there is no compelling case for the grant of statutory powers and these proposals should be dismissed.