Neutral Citation Number: [2026] EWHC 2002 (Admin)

Case No: AC-2026-LON-000875

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2026

Before:

LORD JUSTICE DINGEMANS, SENIOR PRESIDENT OF TRIBUNALS

THE HONOURABLE MRS JUSTICE LIEVEN DBE

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Between:

The King (Royal Mint Court Residents' Association)	**Claimant**
- and –	
[1] Secretary of State for Housing, Communities and Local Government [2] London Borough of Tower Hamlets	**Defendants**

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Lord Banner KC and Matthew Henderson and Aarif Abraham (instructed by **Leigh Day**) for the **Claimant**
Richard Moules KC and Robert Williams KC (instructed by **Government Legal Department**) for the **First Defendant**

Hearing dates: 14th - 15th July 2026

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Approved Judgment

This judgment was handed down remotely at 11.30am on 31 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE DINGEMANS, SENIOR PRESIDENT OF TRIBUNALS
THE HONOURABLE MRS JUSTICE LIEVEN

Mrs Justice Lieven:

1. The Claimant ("**RMCRA**") brings a claim for statutory review pursuant to section 288 of the Town and Country Planning Act 1990 ("**TCPA 1990**") and section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("**PLBCAA 1990**") challenging the decision of the Secretary of State for Housing, Communities and Local Government ("**SSHCLG**") to grant planning permission and listed building consent (together "**the Consents**") for the redevelopment of Royal Mint Court, London EC3N 4QN ("**the Site**") to provide an embassy ("**the Embassy**") to be occupied by the People's Republic of China ("**PRC**"). This decision is contained in a Decision Letter dated 20 January 2026.

2. The Claimant was represented by Lord Banner KC, Matthew Henderson and Mr Abraham; the SSHCLG by Richard Moules KC and Robert Williams KC.

3. The Site comprises around 2.10 hectares. It lies immediately to the east of the Tower of London, on the east side of a major junction. The Site was the home of the Royal Mint from 1809 until the late 1960s. Before 1809 it had a number of historic uses, including a Cistercian Abbey, some of the ruins of which remain on the Site. The Site contains a number of listed buildings.

4. RMCRA represents the families and businesses that reside and operate from the 100 leasehold properties built in 1987 for key workers at Royal Mint Court (also known as St Mary Graces Court or **"SMGC"**). Those properties are close to the Site at the rear (east side) of the proposed Embassy and lie within the same freehold title as the Property.

5. The People's Republic of China acquired the Site in 2018. Diplomatic Consent was granted by Note Verbale dated 4 May 2018. The PRC first applied for permission to use the Site as an Embassy in 2021, <u>as required by the Note Verbale</u>, and that application was refused by the London Borough of Tower Hamlets (the LPA) on 10 February 2023.

6. The PRC made the current applications on 15 July 2024, and this was called in by the SSHCLG on 14 October 2024. The application was for a combination of change of use, refurbishment and new development, and for listed building consent.

7. A public inquiry was held between 11-19 February 2025 before the Inspector (**"the Inquiry"**). The Inspector detailed the PRC's participation in the Inquiry in her report, which included signing a Statement of Common Ground with the LPA on 12 February 2025. After the Inquiry, the PRC signed a Section 106 Agreement with the LPA on 1 May 2025 agreeing planning obligations.

8. The Inspector sent the SSHCLG her report on 10 June 2025. On 6 August 2025 the SSHCLG wrote to the PRC asking for clarification on various points. The Decision Letter was issued on 20 January 2026.

9. The RMCRA and other residents' groups raised concerns throughout the application process about their personal safety given their proximity to the Site and given that, for RMCRA residents, the PRC was their freeholder. Those concerns encompassed the risk posed by terrorist threats to the Embassy, the impact of protests upon residents, and the risk of coercive action by the PRC if the residents were to protest about the Embassy. The strength of feeling in this case is clear and it is therefore important to state at the outset the very narrow focus of the court in relation to the lawfulness of the Decision, rather than the merits of the Decision, which is not a matter for the court.

10. Further detail of the application process is set out, as relevant, under the Grounds below.

Diplomatic Status of the Site

11. The PRC obtained diplomatic consent from the then Foreign Secretary, Rt Hon Boris Johnson MP, on 4 May 2018, to designate the Site as premises of the mission pursuant to section 1 of the Diplomatic and Consular Premises Act 1987 (**"DCPA 1987"**). This consent was formally given by the Foreign Secretary via Note Verbale, dated 4 May 2018. It was a requirement of the consent that the PRC applied for, and obtained, planning permission and listed building consent. The Property is intended to become the PRC's Embassy in the UK in reliance on this diplomatic consent.

12. Correspondence from the Foreign, Commonwealth and Development Office (**"the FCDO"**), the Home Office (**"the HO"**) and from other bodies to the SSHCLG confirms that consent was granted for, and inviolability attached to, the Property as designated mission premises on 4 May 2018, and that failure on the part of the PRC to obtain planning permission would result in a withdrawal of the existing consent by the Foreign Secretary.

13. Therefore, inviolability attached to the Site for the purposes of Article 22 of the Vienna Convention on Diplomatic Relations 1961 (**"the Vienna Convention"**), which has effect in the UK under section 2 and schedule 1 to the Diplomatic Privileges Act 1964 (**"DPA 1964"**). Such consent may only be given or withdrawn under section 1 DCPA 1987 if the Secretary of State *"is satisfied that to do so is permissible under international law."*

14. The Vienna Convention, as relevant, provides:

Article 22

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Article 29

1. The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity

Article 31(1)

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

Article 41(1) and (3)

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

Grounds of Challenge

15. There are four Grounds now relied upon:

a. Ground One – unlawful approach to the enforcement of planning conditions and obligations;

b. Ground Two – unlawful failure to disclose the Security Statement and Blast Assessment;

c. Ground Three – Non-compliance with Article 7 of the Town and Country Planning (Development Management Procedure) England Order 2015;

d. Ground Five – unlawful failure to identify and assess human rights.

16. The Claimant initially put forward six grounds for Statutory Review and one ground for Judicial Review. By order dated 30 March 2026, Lieven J directed that Grounds 1, 2, 3, and 5 would be considered on a rolled-up basis. A separate permission hearing was held on 20 April 2026 for Ground 4, Ground 6, and Judicial Review Ground 1. The Claimant did not pursue Ground 6, and Judicial Review Ground 1 was withdrawn by consent, so the permission hearing was limited to dealing with the grant of permission for Ground 4 of the Statutory Review. Ground 4 raised a discrete issue concerning mitigation measures relating to national security concerns. In a judgment handed down on 28 April 2026, Dingemans LJ and Lieven J found that it was unarguable, and permission was refused.

The Decision Letter

17. The SSHCLG considered the handling of the applications and the identity of the applicant at paragraphs 9-13 of the Decision Letter (raised under Ground 1). At paragraphs 10-11 he said:

"10. The Secretary of State notes that the applications are not being pursued on the basis of a personal permission (IR13.22-13.24); however, the intention is that the premises shall be occupied as an embassy by the People's Republic of China (PRC). For the reasons given at IR13.25-13.30, he agrees that any ethical or similar objections to the provision of an embassy for a specific country cannot be a material planning consideration (IR13.27). He further agrees that PRC is not a material consideration in itself, and nor are any moral, ethical or cultural considerations which may or may not arise from the PRC as occupants (IR13.29). For the same reasons, the Secretary of State considers that the same is true of general (as opposed to site-specific – see paragraph 11 below) concerns around national security arising from the identity of the proposed occupants. The Secretary of State agrees with the Inspector's overall approach

to the identity of the proposed occupants (IR13.29). He notes the Inspector's comments at IR13.93 and considers that non-site-specific national security concerns would be dealt with by other means, via other legal processes and by various agencies, including under the Vienna Conventions (see footnote 9 below), and that this is not something that can be controlled through the planning system.

11. However, the Secretary of State further notes that a number of site-specific issues related to the proposed occupants have been raised (IR13.25.1-13.25.5), including matters related to security. This includes concerns relating to the proximity of telecommunications cables at the Wapping Telephone Exchange (IR10.95 and IR10.296). He considers that site-specific matters linked to the identity of the proposed occupants, including in relation to national security, are capable of being material planning considerations, and these matters are addressed below. Insofar as they are material to the planning case before him, the Secretary of State has taken site-specific national security considerations into account in reaching his decision."

18. At paragraphs 15-19 of the Decision Letter, he deals with the documents held by the LPA, including the background to communications about the Blast Assessment and the Security Statement (raised under Ground 2). At paragraphs 17-19 he says:

"17. Both documents were provided to the Secretary of State. He has carefully considered whether it was necessary for these documents to be shared with parties for comment before a decision was taken, noting that representations to the inquiry from Royal Mint Court Residents' Association (RMCRA) and RMTRA refer to these documents not being publicly available and raise concerns regarding the clarity of security measures. He has concluded that it was not necessary to share these documents before proceeding to a decision. Security arrangements were fully canvassed at the inquiry, with the Inspector's conclusions being set out at IR13.146-13.156. Conditions 25, 26, 27 and 35 in Annex B2 deal with security (IR13.191-13.192 and IR13.199), as does the s.106 at schedule 3 (IR13.205-12.210). The Secretary of State's conclusions on these matters are at paragraphs 53-60 below. Neither document deals with new matters which were not discussed at the inquiry. Both documents are inputs to other publicly available documents. The Security Statement is referred to in paragraph 9.2 of the Design and Access Statement, which was an inquiry document. The Blast Assessment was commissioned by LBTH at the request of the CTSA and formed an input into the CTSA advice which was subsequently provided to LBTH. The CTSA advice informed the Committee Reports for the original refused application, and the current application. These Committee Reports were both inquiry documents. While not every piece of information in the Security Statement and the Blast Assessment was directly before the inquiry, the Secretary of State does not consider that the information they contain would meaningfully add to the material information on which the decision is based, or would result in a different conclusion on security arrangements or the decision as a whole. The wider statutory framework and the substance deriving from these documents was considered by the parties and the Inspector, and security measures will be subject to future approval by LBTH under proposed conditions 25, 26 and 35, with details of CCTV being subject to approval under condition 27.

18. The Secretary of State has considered his duties under Rule 17 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000. He is not, as a result of his consideration of these documents, disposed to disagree with a recommendation of the Inspector, and he was not therefore required to notify parties of this evidence, or to disclose the contents of the documents or circulate them. He has further concluded, for the reasons set out at paragraph 17 above, that it was not necessary to circulate the documents to the parties prior to reaching a decision as a matter of general procedural fairness.

19. As the Secretary of State has concluded that it was not necessary to share these documents, *he has further concluded that it was not necessary to reopen the inquiry or share them under a s.321 direction."*

19. At paragraphs 42-51 of the Decision Letter, he dealt with protest activity, highway safety and traffic (raised under Ground 5). He considered the position of the Metropolitan Police Service and noted at paragraph 47 that *"While the MPS's concerns, and those of objectors, are understandable, the Secretary of State also agrees with the MPS's position that 'the location of the Royal Mint site means that large-scale protests… are able to be policed safely, balancing the rights of protestors with the local community and road users".* At paragraph 48 of the Decision Letter the SSHCLG noted that *"protests are common across London and the MPS is highly experienced."*

20. At paragraphs 49-50 of the Decision Letter, he concludes:

"49. For the reasons given at IR13.117-13.121, the Secretary of State agrees that the risk of disruption from protest activity to those living directly adjacent to the site are limited (IR13.119), and that the risks of disruption to local residents more broadly would likely be occasional, and not at a level which would justify the refusal of the proposed use at the site on such grounds (IR13.120). He has further taken into account the proposed mitigation measures (IR13.122- 13.123).

50. Overall, the Secretary of State agrees with the Inspector at IR13.124 that, while it is accepted that protest activities would be likely to occur at the site, the impacts would be appropriately managed to reduce their effects on the highway network as well as on the local residents. He agrees that there would be no policy conflict arising from the proposals in this regard, and does not consider that the impact of protest activities is a matter which would justify a refusal of permission in this case."

21. At paragraphs 54-58 of the Decision Letter he deals with terrorism and crime (raised under Ground 5):

"54. The Secretary of State agrees with the Inspector that terrorist attacks are serious, devastating the lives and communities affected by them, and it is right to consider this matter seriously (IR13.139). However, he also agrees with the Inspector that whether or not a specific threat would arise from the proposed use of the site is somewhat academic because the threat to the UK from terrorism is currently assessed as being 'substantial', meaning an attack somewhere in the UK is likely (IR13.139).

55. The Secretary of State considers that the potential for a terrorist threat is material to the decision in this case. He has taken into account that the MPS has not objected in respect of terrorism concerns, and that FCDO/HO have also not raised any objections relating to terrorist activities (IR13.143). The Secretary of State notes that those bodies have particular expertise and responsibility in terms of counter terrorism and places significant weight on their not having objected on this issue.

56. The Secretary of State agrees with the Inspector that should there be a terrorist attack, neighbouring residential properties, in particular those at St Mary Grace's Court, would be vulnerable. However, he also agrees that, by their nature, terrorist attacks are indiscriminate in their nature and have far reaching and deadly consequences (IR13.141).

57. The Secretary of State has also taken into account the planning policy approach set out in the Framework, which refers to appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security, and the LP (IR13.140 and 13.144). He agrees that fundamentally the policy basis relates to design matters and *designing out crime and reducing risk, and further notes that the Designing Out Crime Officer for the MPS has not raised any objections (IR13.145).*

58. The Secretary of State has taken into account the broader national risks of a terrorist attack; the lack of evidence of a specific identified terrorist threat to the proposed use; the absence of an objection from bodies responsible for counter terrorism; and the security measures which would be put in place (see paragraph 59 below). For the reasons set out above, he considers that while the threat of terrorism is undoubtedly a serious matter which he has taken into account in reaching his decision, in the circumstances of this case it does not weigh against the decision."

22. At paragraphs 59-60 of the Decision Letter he covers security measures and says that he has taken into account the concerns of RMCRA, but agrees with the Inspector at paragraph 60 that the package of security measures would be proportionate to the proposed use of the Site:

"60. The Secretary of State has taken into account representations on this matter including the concerns of RMCRA regarding the opportunity to review security arrangements. Taking into account his conclusions at paragraph 17 above, he agrees with the Inspector that the package of security measures proposed would be proportionate to the proposed use of the site (IR13.156). He further agrees that bringing a vacant and derelict site back into use, combined with the above measures, is likely to create a safer environment in the surrounding areas around the site, and could reduce crime (IR13.152). The Secretary of State agrees that the policy objectives set out in LP policy D11 and paragraphs 102 and 135(f) of the Framework would be met."

23. The SSHCLG deals with public safety in the Heritage Interpretation Centre (**"HIC"**) at paragraphs 69-74 of the Decision Letter. He describes the FCDO and HO's concerns that emergency services will not be able to enter this area and explains that those concerns were withdrawn in a letter sent by the FCDO and HO to the SSHCLG dated 20 August 2025, following the PRCs assurance that it would implement necessary security checks for entry into the HIC and would agree an Events Management Plan. At paragraph 72, the SSHCLG amends condition 35 related to that Events Management Plan *"to require that the EMP shall provide details of the measures regulating public access to the HIC following consultation with FCDO on behalf of the UK Government and local emergency services"*. At paragraph 74, he finds that the risks in the HIC are appropriately managed, noting that *"the need to manage the safety and health of nationals from other countries on embassy premises is not unique to this case,"* and *"the approach set out above provides consistency with measures required at other diplomatic estates."*

24. At paragraphs 89-99 of the Decision Letter the SSHCLG covers the issue of the redacted drawings (raised under Ground 3). He sets out the background to the matter, and the parties' representations, and comes to a conclusion at paragraphs 93-99:

"93. The Secretary of State has carefully considered the parties' representations on this matter. As a starting point he notes that any planning permission and listed building consent would only be granted for the proposed development in accordance with the drawings in condition 2 of Annex B1 and condition 2 of Annex B2. He notes that of the 52 drawings which were originally marked as redacted, or listed as redacted in the drawing schedule, revised versions of 43 drawings have now been provided. Nine drawings from the original list in Annex A of the reference back letter of 6 August are unchanged, and no further versions of these drawings have been provided. He notes that no drawings are now marked as redacted, but has taken into account that the schedule to the applicant's response of 20 August variously states in respect of a number of drawings that: 'Use information for the smaller rooms/remaining rooms/ remaining spaces (areas with no public access) is not shown, which is however irrelevant to the planning.' The Secretary of State has considered whether the drawings and other materials

which are before him provide sufficient information to properly understand the development proposed and enable him to reach a conclusion on whether planning permission and listed building consent can be granted. In doing so, he has treated the application as being for a single composite development and has taken into account all elements of the proposal, even if in isolation some of those elements (such as the internal works) would not amount to development for the purposes of s.55 TCPA 1990.

94. In respect of staff accommodation, the Secretary of State has reviewed the drawings referred to at paragraph 90a above, and considers that they provide a sufficient level of information. His conclusions on amenity for future occupants are at paragraphs 84-87 above.

95. In respect of the location and site plans, and the masterplan for proposed works on Cartwright Street (referred to at paragraph 90b-c above), the Secretary of State considers that while details of internal rooms are not shown, that is not inappropriate where the planning purpose of the drawing is to deal with external matters.

96. The Secretary of State has considered the statements in the applicant's Consolidated Drawing Schedule that the use information which is not shown is irrelevant to planning. He considers that it cannot be said definitively that use information is by its nature irrelevant to planning and incapable of being a material consideration. However, neither does he consider that the absence of this information must automatically lead to a refusal of permission and/or listed building consent. The extent of its materiality to the decision will depend on the particular circumstances of the case.

97. The Secretary of State has reviewed the 24 plans which do not show use information for all rooms. He has also reviewed room use information provided in some cases on cross sectional drawings. In the circumstances of this case, given the material which is before him, and the nature of the proposed embassy use, the Secretary of State does not consider that there is real as opposed to theoretical ambiguity as to what planning permission is sought for, or that it is impossible properly to understand the scope of the uses proposed.

98. The rooms for which no particular use is specified may only be used for any lawful embassy use. The Secretary of State has considered the potential planning impacts which could arise from the lawful use of these rooms. He considers that if rooms other than those specifically identified as being for staff or visitor accommodation were used for overnight accommodation, this could give rise to materially harmful impacts in terms of amenity, accessibility and fire safety, which have not been assessed. He considers it is appropriate to impose a condition preventing this, and has accordingly amended condition 31 in Annex B2. The representations received on this issue raise generalised concerns about the potential use of these rooms which he has taken into account. Other than the issue of staff and visitor accommodation, he does not consider that any lawful embassy use of the unmarked rooms would give rise to material adverse planning impacts.

99. Overall, for the reasons set out above, the Secretary of State considers that he has sufficient information before him to grant planning permission and listed building consent. Development in compliance with the drawings is secured via condition 2 of Annex B1 and condition 2 of Annex B2. The question of planning enforcement in the context of diplomatic immunity is addressed at paragraphs 103-105 below."

25. Also relating to Ground 1 and 3, the SSHCLG says at paragraph 102 of the Decision Letter:

"102. The Secretary of State has taken into account that the LFB provided general advice on the planning application, which noted the greyed out areas on plans, but did not object to the

proposals. Taking into account his conclusions at paragraph 98 above, his imposition of a condition preventing areas which are not specifically identified as being for residential use being used for overnight accommodation, and the fact that the scheme will be implemented in accordance with the Fire Statement and Fire Strategy, the Secretary of State considers that the application makes adequate provision for fire safety."

26. On planning enforcement (raised under Ground 1), the SSHCLG says at paragraphs 103-105 of the Decision Letter:

"103. The Secretary of State acknowledges that the immunity and privileges applicable to the applicant, its diplomatic premises and its officers to some extent curtails the traditional options for enforcing breaches of planning control. However, he does not consider that planning control in respect of the proposed development, or diplomatic premises generally, to be effectively unenforceable. Nor does he accept the apparent suggestion made in some of the representations that attaching any planning condition to a grant of planning permission for an embassy would be ineffective and unlawful.

104. Immunity does not affect the lawfulness of an act, and inviolability of diplomatic premises does not confer or imply exception from local laws or regulations. The Secretary of State expects States, including the PRC, to abide by the terms of any grant of planning permission, including its conditions, and notes that Article 41 of the Convention on Diplomatic Relations places an obligation on 'all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State'. Where States contravene such laws and regulations, there are applicable remedies under the Vienna Conventions including declaring the head of the mission or member of the diplomatic staff persona non grata (Article 9) or, in extremis, severing diplomatic relations.

105. The Secretary of State has taken into account that the applicant has sought planning permission and listed building consent, and has participated constructively in the process. In his view this demonstrates the applicant's willingness to engage appropriately with requirements under the planning system. Overall, he considers that the inevitable limits on planning control in this case, which are common to all diplomatic premises, do not constitute a reason for refusing planning permission in this case."

27. The SSHCLG's conclusion on the enforceability of the planning conditions is at paragraph 110:

"110. In reaching this conclusion, the Secretary of State has taken into account the issues around enforceability in diplomatic premises, as set out at paragraphs 103-105 above. He considers this is material to the question of whether conditions can lawfully be imposed. He considers that, taking a pragmatic view, it is reasonable for him to conclude that the conditions are likely to be adhered to by the applicant, and that the proposed conditions are therefore de facto enforceable."

28. He sets out the overall planning balance at paragraphs 122-127 of the Decision Letter and concludes that planning permission and listed building consent should be granted.

<u>The law on the Court's approach to Decision Letters</u>

29. The general principles applicable to planning statutory challenges were common ground and are set out in <u>St Modwen Developments Ltd v SSCLG</u> [2018] P.T.S.R. 746 at [6]-[7] per Lindblom LJ:

"The principles on which the court will act in a section 288 challenge 6. In my judgment at first instance in Bloor Homes East Midlands Ltd. v Secretary of State for Communities and Local

Government [2014] EWHC 754 (Admin) (at paragraph 19) I set out the "seven familiar principles" that will guide the court in handling a challenge under section 288. This case, like many others now coming before the Planning Court and this court too, calls for those principles to be stated again – and reinforced. They are:

"(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in Seddon Properties v Secretary of State for the Environment (1981) 42 P. & C.R. 26 , at p.28).

(2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in South Bucks District Council and another v Porter (No. 2) [2004] 1 W.L.R. 1953 , at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into Wednesbury irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in Tesco Stores Limited v Secretary of State for the Environment [1995] 1 W.L.R. 759 , at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in Newsmith v Secretary of State for Environment, Transport and the Regions [2001] EWHC Admin 74 , at paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in Tesco Stores v Dundee City Council [2012] P.T.S.R. 983 , at paragraphs 17 to 22).

[…]

7. Both the Supreme Court and the Court of Appeal have, in recent cases, emphasized the limits to the court's role in construing planning policy (see the judgment of Lord Carnwath in Suffolk Coastal District Council v Hopkins Homes Ltd. [2017] UKSC 37 , at paragraphs 22 to 26, and my judgment in Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314 , at paragraph 41). More broadly, though in the same vein, this court has cautioned against the dangers of excessive legalism infecting the planning system – a warning I think we must now repeat in this appeal (see my judgment in Barwood Strategic Land II LLP v East Staffordshire Borough Council [2017] EWCA Civ 893, at paragraph 50). There is no place in challenges to planning decisions for the kind of hypercritical scrutiny that this court has always rejected – whether of decision letters of the Secretary of State and his inspectors or of planning officers' reports to committee. The conclusions in an inspector's report or decision letter, or in an officer's report, should not be laboriously dissected in an effort to find fault (see my judgment *in Mansell, at paragraphs 41 and 42, and the judgment of the Chancellor of the High Court, at paragraph 63)."*

Ground One

30. The Claimant submits that the SSHCLG erred in respect of his reliance upon conditions and obligations to ensure the acceptability of the proposed Embassy, given the inviolability of the Site under the Vienna Convention. This Ground has three limbs:

    a. The SSHCLG failed to have regard to a mandatory material condition, namely the identity of the PRC as the applicant;

    b. The SSHCLG failed to have regard to the limitations of any "remedies" under the Vienna Convention 1961;

    c. The SSHCLG was irrational to conclude that the PRC would comply with the relevant planning conditions and obligations.

31. The relevant parts of the Decision Letter for the purposes of this Ground are paragraphs 10-11, 102-105, and 110, see paragraphs 17, 23, and 25-27 above.

32. Lord Banner placed particular reliance on two aspects of the conditions where he said the inability to legally enforce the conditions was particularly important: (i) conditions that were relevant to fire safety, particularly in the light of the redacted plans; and (ii) those that related to public safety in the Heritage Interpretation Centre (**"HIC"**).

33. The HIC is on the west side of the Site adjoining a new public square, Cultural Exchange Square. Cultural Exchange Square adjoins the street and is publicly accessible. The HIC will contain the remains of the Cistercian Abbey. Public access to the HIC will be allowed during opening hours so that the public can access the Cistercian ruins on the site.

34. The London Fire Brigade had initially expressed some concern about being able to access this part of the Site in an emergency, given that it would fall within the inviolable area. Similar concerns were raised by the FCDO and HO in a joint letter of 14 January 2025.

35. In a later joint letter of 20 August 2025, the FCDO and HO detailed the arrangements they had agreed with the PRC to address their concerns. The PRC agreed to waive inviolability on Cultural Exchange Square, but not the HIC. HIC risks would be mitigated with security checks and an Events Management Plan. That agreement with the PRC is contained in a Note Verbale dated 18 March 2025.

36. Lord Banner submits that it follows from this background that there was a real concern about access for the emergency services to the HIC.

37. The Claimant points to the range of powers under the TCPA 1990 to deal with existing or anticipated breaches of planning control. It is not necessary to set these out exhaustively. However, they include the power to serve temporary and full stop notices (section 171E), which can require immediate cessation of work; the service of enforcement notices and the provisions regarding criminal offences (section 187); breach of condition notices (section 187A); and the ability to apply for injunctive relief, including for interim injunctions (section 187B). Further, Lord Banner points to the power under sections 196A and B for the Local Planning Authority to enter premises to investigate whether there has been a breach of planning control.

38. Lord Banner submits that these statutory powers provide a swift and effective mechanism for ensuring that planning control can be enforced, including anticipatory steps if there is the risk of a future breach.

39. However, the principle of inviolability under the Vienna Convention means that the LPA cannot undertake any of those steps unless the PRC agrees. Lord Banner submits that, as a result, it is of the greatest importance to consider the identity of the applicant and to carry out an assessment of the likelihood of the specific applicant (here the PRC) complying with the conditions attached to the planning permission.

40. He relies heavily on the factual history set out in *Belfast City Council v Meifang* [2020] NICh 12. In that case the PRC breached planning control in respect of the consulate in Belfast and relied on the Vienna Convention in rejecting the applicability of planning law and the jurisdiction of the court. The consulate was a listed building, and a perimeter wall had been constructed without listed building consent, see [8]. The Council applied for an interim injunction against Madame Meifang, the Consul General, to restrain her from carrying out development without the benefit of planning permission, see [1].

41. McBride J held that Madame Meifang could claim immunity under the Vienna Convention, see [26], and that the premises were inviolate, see [38], where it is recorded that Madame Meifang refused to accept the jurisdiction of the court and could not be arrested.

42. At [39]-[40] the Judge said:

"[39] Mr Scoffield argued that the grant of an injunction would be effectual for a number of reasons. In particular, he stated that there was a hope that the grant of an injunction by the court would be sufficient to persuade the respondent to modify her actions as she would know the court had ruled her compliance with the Notices issued by the Council was required. I reject that submission because it is quite clear to date that the respondent has refused to recognise the authority of this court, she has not appeared before this court, she has ignored the Notices to date and there is nothing before this court to indicate that the granting of an injunction by this court would in some way ensure compliance. In fact, it seems to me from the correspondence that it would have the opposite effect. When the Council refused to accept that the Consul General, Madame Zhang Meifang, had immunity that actually led to a breakdown in discussions which were quite fruitful at that stage.

[40] Secondly, Mr Scoffield said that the grant of an injunction would assist in the diplomatic effort with the Foreign Office and he referred to commentary in Diplomatic Law, Commentary on the Vienna Convention on Diplomatic Relations, 4th Ed. by Eileen Denza, Oxford University Press, pages 264-265 as authority for the proposition that intervention by the court will often assist in that process. I accept that in certain cases that is correct but the difference in this case is that the works that are being carried out are not private acts but rather are acts done on behalf of the sending State and therefore I consider that the grant of an injunction would hinder rather than assist diplomatic efforts. It seems to me that seeking the certificates from the Foreign and Commonwealth Office did have the effect of producing discussions at a high level through diplomatic channels and I think that that is something that would work much better than the grant of an injunction."

43. Lord Banner submits that this is clear evidence of the risk that the PRC will not abide by planning law and by any conditions attached to the Consents for the Embassy. There was therefore a duty on the SSHCLG to expressly consider the identity of the applicant and the likelihood of it abiding by the condition.

44. Lord Banner submits that the inability to enforce planning control is highly material to the decision, particularly in the light of there being no power to require entry to the Site to discover

if there are breaches, no legal means of preventing an apprehended breach, and no legal means of achieving a cessation of breach. The importance of the conditions to the decision to grant the consent is apparent from the need to ensure fire safety across the Site, and the need to ensure public safety, particularly in relation to the HIC where there will be public access.

45. At paragraph 10 of the Decision Letter the SSHCLG refers to the identity of the applicant but carries out no specific analysis of the likelihood of the PRC complying with planning control, including the conditions. The reference in paragraph 10 to the Vienna Convention is entirely generic and does not focus on the identity of the PRC, and in particular on its history of non-compliance in *Belfast*.

46. In respect of Ground 1(b), the Claimant submits that the SSHCLG failed to properly consider the limitations of the *"remedies"* under the Vienna Convention, as referred to at paragraph 104 of the Decision Letter. Lord Banner says that the steps that can be taken under the Vienna Convention are all "after the event" and there is no ability to prevent an apprehended breach of planning control.

47. Under Ground 1(c), the Claimant submits that, even assuming the SSHCLG did appropriately take into account the identity of the PRC and the limitations of the remedies, he reached an irrational conclusion and failed to give adequate reasons for his decision applying the *South Bucks* standard.

48. At paragraph 105 of the Decision Letter, the SSHCLG places reliance on the fact that the PRC *"has participated constructively in the process"*. However, Lord Banner points out that the grant of diplomatic consent had been conditional upon the grant of planning permission, so the PRC had no choice but to engage with the process. In addition, the PRC actively opposed post-completion verification checks during the Inquiry, which Lord Banner suggests indicates that they are unlikely to comply with planning control in the future.

49. I note that the Inspector refused the PRC's condition on post-completion verification checks, amending condition 33 at paragraph 13.197 of the Inspector's Report, and the PRC ultimately signed a Section 106 Agreement on 1 May 2025 agreeing at Clause 7.1.2 that:

"The Owner [the PRC] hereby covenants with the Council that the Owner… will to the extent allowed by the Vienna Convention and other applicable treaties between the UK and China permit the Council and its authorised employees and agents upon taking reasonable precautions as to their own security and upon reasonable written notice to enter the Site (and any other parts of the Site within its control) at all reasonable times for the purpose of verifying whether or not any obligation arising hereunder has been performed or observed".

50. Again, Lord Banner focuses on the *Belfast* decision and therefore the recent history of the PRC not complying with planning control. Neither the Decision Letter nor the Inspector's Report make any reference to this decision.

51. Mr Moules on behalf of the Defendant submits that the SSHCLG expressly recognised the limits of the enforceability of the planning conditions and obligations at paragraph 103 of the Decision Letter. The SSHCLG concluded that he could rely on Article 41 of the Vienna Convention. He thought it likely that the PRC would comply with planning control and concluded at paragraph 105 that these matters were not a good reason to refuse consent. In reaching his ultimate conclusion at paragraph 110, he had firmly in mind the issues around enforceability, but again concluded that the conditions were likely to be adhered to and were "de facto" enforceable. These were planning judgements for him and there is no arguable basis to intervene.

52. The Inspector took into account the fact that the PRC had initially objected to a condition requiring post-implementation checking but had ultimately accepted condition 33. Similarly in relation to the HIC, the FCDO had withdrawn its objection in the light of the PRC agreeing to the Events Management Plan. These were both examples of the PRC engaging constructively in the planning process. The SSHCLG was therefore entitled to take into account *"the applicant's willingness to engage appropriately with requirements under the planning system"* at paragraph 105 of the Decision Letter.

53. The SSHCLG relies on R (Rochdale MBC) ex p Tew 2000 Env LR 1 at p.37, where Sullivan J said that whether a condition is enforceable should be judged *"not on the basis of what is theoretically possible… but on the basis of whether the person served with the Enforcement Notice can reasonably be expected to have to comply with it"*.

54. On Ground 1(b) there is nothing to support the argument that the SSHCLG misunderstood the remedies under the Vienna Convention, which cover a range of potentially escalating steps. Lord Banner is wrong to submit that diplomatic remedies are only retrospective. There is a continuing obligation on the PRC under Article 41 to obey domestic law, and diplomatic steps can be prospective where appropriate.

55. On Ground 1(c) the SSHCLG did not find that the PRC was likely to comply with conditions. Rather he concluded at paragraph 104 of the Decision Letter that he expected the PRC to comply and there were remedies available under the Vienna Convention if they failed to do so. There was nothing arguably irrational in this conclusion. Furthermore, it would be impractical to reach a specific conclusion about future adherence to planning control by a foreign state in any meaningful way.

56. *Belfast* does not establish any legal principle and there was no duty to give express reasons in respect of it. The Decision Letter gives reasons for rejecting the argument that inviolability meant that the conditions could not be relied upon and consent should therefore be refused. That was the principal important controversial issue to which the duty set out in *South Bucks* at [36] applied. It is clear from the Decision Letter what the SSHCLG's conclusion on this issue was. There was no duty to give further reasons in this regard.

57. Further, the facts set out in *Belfast* actually support the SSHCLG's conclusion that it is reasonable to rely on the remedies within the Vienna Convention. As is recorded at [39] of the judgment, it was the Council's refusal to accept Madame Meifang's immunity which led to the breakdown in discussions. This supports a view that it is reasonable to rely on the diplomatic route to ensure planning control.

Conclusions on Ground 1

58. This Ground is arguable because it raised points about the status of embassies and the enforceability of planning law, however it does not succeed. There is no doubt that the SSHCLG took into account the identity of the applicant, including in respect of the issue of compliance with planning control. That is clear from paragraphs 10 and 103-105 of the Decision Letter, and in particular paragraph 105, where specific reference is made to the PRC's engagement in the planning process.

59. At paragraph 105, the SSHCLG expressly considers whether there are grounds to refuse consent because of the limitations on enforceability and he determines that there are not. There was no obligation on the SSHCLG to go further and carry out a more specific or percentage-based assessment as to the likelihood of the PRC complying with conditions or other planning requirements in the future. There is no caselaw which supports the proposition that such an assessment is a mandatory consideration, whether on a percentage basis or otherwise. Further,

such an assessment would necessarily depend on a large range of variables over a long and unlimited time frame, and as such is likely to be a largely otiose exercise.

60. The obligation on the SSHCLG was to take into account all relevant considerations, which here critically included the inability to enforce the TCPA 1990 through domestic law, but also the powers and duties under the Vienna Convention. Both of those matters were taken into account and expressly balanced.

61. On Ground 1(b) the SSHCLG was clearly aware of the scope of remedies under the Vienna Convention, but also their limitations. There is no basis to find that there was any misdirection given that the SSHCLG plainly considered what he described at paragraph 105 of the Decision Letter as the *"inevitable limits"* of the remedies before him.

62. On Ground 1(c) the SSHCLG has given reasons for rejecting the Claimant's argument that the PRC would not comply with planning control. That was the principal important controversial issue that the Decision Letter had to deal with pursuant to *South Bucks* at [36]. There was no duty to go further in the reasons and refer expressly to *Belfast*. That would be an obligation to give reasons for the reasons.

63. Further, and in any event, the lessons from the *Belfast* case are by no means as straightforward as the Claimant suggests. As is set out above, there was material which supported a conclusion that the PRC would co-operate so long as the status of immunity was accepted. It was open to the Secretary of State to take the view that the PRC would have acted differently if the Council had accepted Madame Meifang's immunity at the outset, as the court accepted that they should have done. Therefore, *Belfast* is not clear evidence that the PRC would have simply ignored planning control.

Ground 2

64. The Claimant submits that the SSHCLG unlawfully failed to disclose the Security Statement and Blast Assessment to the RMCRA before making the Decision.

65. There are a number of documents that are relevant to this Ground and it is necessary to outline them in some detail, as one of the Defendant's arguments is that the issues raised in the Security Statement and Blast Assessment were substantively raised in other documents that were already available to the Claimant.

66. The relevant documents are:

a. The Security Statement, dated 19 June 2024 ("the Security Statement"), which is a short summary of a 2019 Risk Assessment that was commissioned by the PRC for the purpose of evaluating the security risks at the Site.

b. The Blast Assessment, dated 6 July 2022 ("the Blast Assessment") , which is a report commissioned by the London Borough of Tower Hamlets (the LPA) in the context of the 2021 planning application by the PRC for the same Site (preceding the current application).

c. The Officers' Reports, dated 1 December 2022 and 9 December 2024, which relate to the PRC's 2021 and current planning applications, respectively. They contain summaries of the Blast Assessment.

d. The Crilly Report, dated 2 September 2024, which is a report commissioned by the Claimant for the purposes of the Planning Inquiry. It outlines the threats to the buildings around the Site in light of the proposed Embassy.

e. The Inspector's Report, dated 10 June 2025, which recommended the grant of the permission for the proposed Embassy.

67. The Officers' Reports and the Crilly Report were before the Inspector at the Inquiry. The Security Statement and Blast Assessment were not before the Inspector at the Inquiry.

68. On 29 August 2025, Kevin Hollinrake MP wrote to the SSHCLG drawing attention to the Security Statement and the Blast Assessment, noting that they were not on the LPA's planning register (and hence had not been before the Inquiry).

69. By a letter dated 16 September 2025, the SSHCLG wrote to the LPA to request the Security Statement and Blast Assessment.

70. On 23 September 2025, the LPA provided the relevant documents and stated that it was for the SSHCLG to decide whether they were relevant. The LPA said that the documents did not make a material difference to the case that they had put to the Inquiry, so they were not addressed in the LPA's Statement of Case (although the documents were referred to in the Officer's Report).

71. The relevant parts of the Decision Letter for the purposes of this Ground are paragraphs 17-19 and 53-60, see paragraphs 18 and 21-22 above.

The Law

72. There is no disagreement between the parties on the principles that apply in relation to procedural fairness.

73. First, whether there has been procedural fairness is an objective question for the court. The court's function is not merely to review the reasonableness of the decision-maker's judgment of what fairness required (R. (Osborn) v Parole Board [2014] AC 115 per Lord Reed at [65]).

74. Second, the requirements of fairness depend upon all the circumstances of the case. For example, in Pathan v Secretary of State for the Home Department [2020] 1 W.L.R. 4506, the Supreme Court recognised that the requirements of procedural fairness are flexible and are not set in stone. They are necessarily influenced by the context and the facts. At [55], Lady Arden quoted the well-known passage of Lord Mustill's speech in R v Secretary of State for the Home Department Ex p Doody [1994] 1 A.C. 531 at [560E-F] where he held that "*The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects*".

75. Third, the Claimant must show that they have suffered material prejudice. In R (Moakes) v Canterbury City Council [2026] P.T.S.R. 356 at [24], by reference to R (ClientEarth) v Secretary of State for Business, Energy and Industrial Strategy [2020] P.T.S.R. 1709 at [241], it was held that the test for procedural fairness is:

"...whether "there has been procedural unfairness which materially prejudiced the [claimant]" (Hopkins Developments Ltd v Secretary of State for Communities and Local Government [2014] PTSR 1145, para 49). This reflects the principle previously stated by Lord Denning MR in George v Secretary of State for the Environment (1979) 77 LGR 689 that "there is no such thing as a 'technical breach of natural justice'... One should not find a breach of natural justice unless there has been substantial prejudice to the applicant as the result of the mistake or error that has been made"; and by Lord Wilberforce in Malloch v Aberdeen Corpn [1971] 1 WLR 1578, 1595 that "[a] breach of procedure, whether called a failure of natural justice, or an

essential administrative fault, cannot give him a remedy in the courts, unless behind it there is something of substance which has been lost by the failure."

The Security Statement

76. In 2019, the PRC commissioned a Security Risk Assessment from a security consultant, Cundall Security, to assess the security risks at the Site. The Security Risk Assessment is held by the PRC and has not been disclosed by them.

77. The 2019 Security Risk Assessment was not submitted as part of the PRC's planning application, although it was mentioned in general terms:

"9.2 Security details

Proposals for the security enhancements of the new embassy site and buildings have been prepared by Cundall Security and have informed the design proposals illustrated in this report. Due to the nature of the subject, details of these proposals have been excluded from this report. Further information pertaining to the security details can be found within the 'Security Statement' prepared by Cundall (Security)."

78. Some security details were included in the *"Design and Access Statement"* (**"DAS"**) that accompanied the PRC's planning application. Paragraph 7.17 of the DAS described new external boundary walls for *"localised strengthening, new HVM [Hostile Vehicle Mitigation], bollards, and secure access points."* Paragraph 10.17 showed a 300mm-thick reinforced concrete slab *"as advised by Cundall Security… Slab provides base restraint to blast walls above."* Paragraph 12.8 included maps that showed blast mitigation in the basement adjoining Mansell Street.

79. On 19 June 2024, Cundall Security provided a two-page statement about the 2019 Security Risk Assessment (**"the Security Statement"**).

80. The Security Statement summarises the security measures which informed the design of the proposed Embassy. It identifies five categories of mitigations: hostile vehicle mitigation; blast mitigation; forced entry and climbing resistance; electronic security measures; and public realm improvements and lighting. Section 2 of the Security Statement on "Blast Mitigation" states that *"Areas of the Embassy will be subject to blast mitigation measures alongside the HVM [Hostile Vehicle Mitigation]. The details of these remain confidential."*

The Blast Assessment

81. As part of the PRC's 2021 planning application (preceding the current application), the LPA commissioned a blast assessment report (**"the Blast Assessment"**) from a security consultant, Arup, at the request of the Metropolitan Police Service's Counter-Terrorist Security Advisor (**"CTSA"**).

82. The references to **"VBIED"** and **"LVBIED"** refer to "Vehicle borne improvised explosive devices" and "Large vehicle borne improvised explosive devices".

83. The Blast Assessment modelled the *"likely impact of blast threats in the event of an explosion attack happening"*:

"1. Introduction

The proposed new Chinese Embassy is to be located at Royal Mint Court, London, EC3N 4QN (Application reference: PA/21/01327). There is a concern that this development might attract terrorist attacks which could have an impact on the neighbouring properties, as such Tower Hamlets Local Authority has instructed Arup Resilience Security and Risk to undertake an assessment to evaluate the likely impact of blast threats in the event of an explosion attack happening near the embassy or a crowded or publicly accessible area associated with the embassy."

84. It is important to note that the Blast Assessment made no assessment of the likelihood of such an attack, or which part of the Site might be targeted if there was an attack. It simply assumed the attack and then assessed the potential impact.

85. It identified *"7 buildings that could be affected in the event of an explosion attack on the embassy",* listed A-G, and assessed the damage on each of them. St Mary Graces Court is Building G. The damage is graded on a scale from R1 to R5: severe injuries or death from direct blast, building collapse or translation (R1); temporary hearing loss, some injuries caused by fragments or translation (R2); some injuries are likely to be caused by fragments and debris (R3); injuries caused by glass breakage and flying/falling debris (R4).

86. Under *"Blast effects on structures",* the Blast Assessment concluded that:

"St Mary Graces Court (building G), due to its close proximity to the rear of the embassy, would be the worst affected by VBIED or LVBIED attack at the rear of the embassy (location 3, 4, 5 and 7). The worst scenario could be possible building collapse or severe damage to building frame under LVBIED attack."

87. Under *"Blast effects on glazing",* the Blast Assessment predicted that:

"For Building G (St Mary Graces Court), maximum of 30% and 50% cracked glazing is expected for the VBIED and LVBIED scenarios considered, respectively. Furthermore, more than 25% high hazard glazing is predicted for a VBIED at 4 of the 7 locations, and for a LVBIED nearly 50% high-hazard glazing is predicted at 6 of the 7 locations. It is evident that for all but the furthest explosive devices, the glazing of the structure is expected to be extensively damaged, and the hazard to the occupants from flying fragments is expected to be relatively high. It is therefore strongly recommended that mitigation measures are applied to the glazing for the protection of the building's residents."

88. Three different mitigation measures were identified: re-glazing; re-cladding; and secondary glazing.

<u>The Officers' Reports</u>

89. The Officer's Report for the PRC's 2021 planning application summarised the Blast Assessment as follows:

"7.90 The MPS CTSA advised that it would be beneficial to undertake a blast assessment for the public realm and neighbouring buildings to better inform the decision maker of any potential impacts linked to the use of explosive devices. Apart from large embassies, blast assessments are, on occasion, advised and undertaken for a range of buildings that may attract large crowds such as sports stadia, large railway stations, shopping malls or locations with high daily transitory populations such as financial districts.

7.91 The Council commissioned a blast assessment which was undertaken by a competent blast assessor on the Register of Security Engineers and Specialists (RSES). The MPS CTSA reviewed *the blast assessment and provided a list of recommendations. The Council have taken these recommendations into consideration and have agreed to secure them as conditions or legal obligations, subject to planning approval. Non-planning recommendations would be passed to other relevant agencies.*

7.92 The blast assessment has identified that successful blast events in selected locations would result in injuries and deaths to passers-by as well as structural damage and potential building collapse. The blast assessment must be framed in the context of the likelihood of such an event (blast) occurring. The CTSA has advised that there is no evidence that the application site itself is at greater risk of terrorism compared with the general threat level in the UK. However, 'Crowded Places' and 'Publicly Accessible Locations' with limited protective security measures are considered to be the most attractive places for potential terrorist activity. Taking account of the advice of the CTSA, there is no evidence that an embassy in this location presents a significantly greater terrorist risk than any other major embassy in London.

7.93 The CTSA has advised that blast attacks are considerably less likely than other, less sophisticated potential attack methodologies due to their complex nature and the ways in which explosive materials are well regulated and difficult to source in the UK.

[…]

7.95 The CTSA advice has been provided in accordance with their security recommendations having to abide by JASPAR principles of being Justifiable, Achievable, Sustainable, Practical, Affordable, Reasonable. The CTSA recommends that a proportionate response might be to implement broader mitigation strategies to manage the associated security risks, rather than focus on physical blast mitigation solutions that will not be sufficiently effective, also taking into account the likelihood of a blast event occurring.

7.96 Further to the above, the National Planning Policy Framework (NPPF) states that planning conditions must be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. The NPPF states that legal planning obligations must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.

7.97 Security concerns of local residents may be capable of amounting to a material consideration when determining a planning application. However, the weight to be given to these issues as material planning considerations should be informed by a reasonable evidential basis. The security concerns raised by residents have been considered and advice has been taken from the Metropolitan Police Counter Terrorism Advisor.

7.98 For the reasons above, it is considered that the broad security measures (HVM bollards, Event/ Protest Management Plan, improvements to St Mary Grace's Court accesses, Royal Mint Green financial contribution, CCTV financial contribution, street lighting and refuse bin review and possible replacement) outlined to be secured by grant of planning consent would be sufficiently appropriate and proportionate to maintain security around the application site." [emphasis added]

90. The Officer's Report for the 2024 planning application stated that the CTSA had *"advised that their previous comments should be applied to the current application"*. It then repeats the summary of the Blast Assessment and comes to the same conclusion at 7.107.

The Crilly Report

91. The Crilly Report was commissioned by the RMCRA in preparation for the Planning Inquiry. It was produced by Crilly Consulting Limited on 2 September 2024 and appended to the RMCRA's Statement of Case for the Inquiry dated 13 December 2024.

92. The Crilly Report relies on guidelines provided by the Centre for the Protection of National Infrastructure4 (**"CPNI"**) (now called the National Protective Security Agency), which provides standards for bomb blast protection in relation to the glazing of buildings.

93. The Crilly Report was highly critical of the security measures for the proposed Embassy:

"The 100 families living in St Mary Graces Court (SMGC), which now includes a nursery school, are not a separate neighbourhood from the proposed Embassy site. They are physically integrated within the Royal Mint Court site owned by the PRC and share the longest boundary line with the proposed Embassy inside the site.

Therefore, the residents and nursery school would be directly part of and in the front line of any protests, activism or terrorist attacks directed at the proposed Embassy, causing their lives to be put in constant and unnecessary danger by a PRC Embassy being built there.
In addition, the SMGC residents' access to and from the immediate roadway, footpaths and cycle routes around their home would likely be severely impacted by:

- *any terrorist attack or protest activity against the PRC Embassy […]*

- *The presence of HVM bollards and blast walls in the security design and application acknowledges the security threat of a VBIED to the Embassy but does not consider the threat with regards to St Mary Grace Court residents, nursery school and buildings being within the same Embassy site footprint as any VBIED attack and destructive blast wave.*

[…]

These threats are obvious and will likely increase, making Royal Mint Court an unsuitable location for the proposed PRC Embassy as was concluded by the London Borough of Tower Hamlets Council and the Mayor of London's office in December 2022.

Specifically for St Mary Graces Court the conclusions of the Security Design peer Review Report are as follows:

1. SMGC residents and their homes are within a collateral damage zone of the part of the Embassy most vulnerable to attack.

2. The vulnerability appears to be caused in part, by target displacement from the high security measures proposed at the Embassy main entrance and what appears to be a failure to recognize the high risk this displacement causes on proposed security design.

3. This displacement is specific to the entire north south boundary line between SMGC and Embassy House and the vehicle access points at East Smithfield and Royal Mint Street/Mansell Street.

4. The proposed security measures at the above points do not appear to mitigate the plausible threats and high risk identified in this report, based on the planning application submissions and the meeting with David Clarke on the 25th of February 2021.

5. As SMGC has less than 20m stand-off and in some cases less than 10m and 5m stand-off from VBIEDs directed at Embassy House, multiple fatalities, injuries and severe structural damage to SMGC residents and their families is highly likely.

6. The provision of a wooden fence ranging from 3m to 1.1m in height was confirmed by Cundall as having zero protection to SMGC in the event of a VBIED blast.

7. The wooden fence is vulnerable to arson and fire and provides no anti-climbing deterrent.

8. SMGC does not appear to have been assessed as to potential collateral damage, the wider perimeter and neighbouring area of the Embassy site as stated in CPNI guidelines for specifying and assessing HVM VSB measures.

9. The main entrance and symbolic frontage of any Embassy is always a high-risk area but not the only high-risk area. The boundary threshold line with the weakest levels of security in place is the SMGC north south boundary, especially the entire boundary line north of the pedestrian gate and bridge.

10. The north south boundary is the longest on the Embassy compound and in Embassy House running directly adjacent to it is located: the greatest building mass and combined floor space and greatest mass density of critical asset utility, MEP and communications, under building basement car parking and constant access in and out of the site. This makes it a highly attractive target building and area for terrorist and activist attacks."

94. Under *"Probability of Terrorism Attack Methodology Updated Chart"*, the Crilly Report considered the probability of different terrorist attack methods. It included a UK Government chart showing the different methods and fatalities of domestic terrorist attacks between January 2005 and July 2023. "Explosives" were the second most common method and the most lethal one.

95. The Crilly Report then considered the vulnerability of St Mary Graces Court as a location for *terrorist attacks:*

"Saint Mary Grace Court residents and buildings will be most vulnerable to explosive blasts from vehicle or person born improvised explosive devices that can easily penetrate or be placed inside the car parks, gardens and outdoor square that border with the proposed wooden fence and footbridge entrance into the Embassy.

[…]

The above building massing and functional overview clearly shows the largest mass as Embassy House/Residences running the entire south to north boundary line with SMGC behind running as a boundary line in parallel.

[…]

This review considers the entire North - South boundary façade of Embassy House to have no boundary protection from one or more N1G size VBIED(s) detonating alongside the SMGC car park boundary as the proposed wooden fence along the boundary line as stated by LS Cundall in the meeting with David Clarke and others on the 25th of February, would be 'toast' in the event of such an explosion."

96. The Crilly Report recommended that blast modelling should be undertaken to understand the damage that would be suffered by St Mary Graces Court in the event of a blast:

"During the call on the 25th of February, Cundall indicated they had not conducted any blast modelling of Embassy House along this boundary fence line as he considered it a minimal risk, however it is unclear if Cundall considered the risk of an N1G sized VBIED detonating within 6.6m of the Embassy façade and residential open balconies.
Based on the above, the results of a blast assessment and modelling along the entire North South façade would need to ensure both the occupants and building are reasonably constructed and protected against such a VBIED device detonating from the SMGC within 6.6m and 9.658m at the north and south ends of the service road.
Due to the high density of people and critical assets located in Embassy House it would be reasonable and risk prudent to do so. As LS stated in the meeting, a parked vehicle detonating at this point was a 'medium hazard'.

SMGC has considerably less than 20m stand-off to be able to withstand a 2,500 kg 4x4 pick-up (N1G) size VBIED. With no glazing, window frame, door frame or structural protection in place from this type of blast, this places SMGC at high risk.

Therefore, in addition to Embassy House, a bomb blast assessment and modelling should also be conducted for SMGC to confirm the extent of damage and casualties such a high risk would produce. Based on a blast assessment and modelling, the required protective measures for SMGC can be put in place and confirmed if additional ones are required for Embassy House."

97. Under *"Impact of VBIED on SMGC with less than 20m Stand-off"*, the Crilly Report considered the damage that could be suffered by St Mary Graces Court in the event of a blast at less than 20 metres:

"This puts the structural damage that would be sustained by SMGC buildings as collateral damage resulting from a 2,500 kg 4x4 pick-up (N1G) size VBIED attack (the above shows a camper van example) on the Embassy from within SMGC car parks, within the potential range of:

- *5m stand-off building collapse and severe façade damage*
- *10m stand-off severe façade damage local to the device*
- *15m stand-off moderate façade damage*

These ranges also increase the likelihood of mass casualties and fatalities to the residents of SMGC in such a blast.

[…]

A review of the Plaza area reveals that the stand-off distance from the staff pedestrian gate on the Plaza side and building façade is 9m. At this distance any size VBIED would cause severe façade damage local to the device and likely death or severe injury to anyone within the direct vicinity of the over pressure and wind speed of such a blast.
The proposed HVM VSB fixed bollards provide a stand-off distance from Cartwright Street to the staff entrance gate of approximately 30m and to the Embassy House building façade of 40m.

This appears to be reasonable stand-off distance to avoid severe structural damage and injury to Embassy House and the pedestrian bridge. The plaza does create a funnel to concentrate a blast at the point of the fixed bollards, that would likely follow the least path of resistance towards the pedestrian gate and the Embassy façade depending on the size of VBIED. Any

VBIED blast at the Cartwright Street bollards would also impact structurally on those SMCG buildings inside 20m of the blast zone with damage, injury, and fatalities, most likely due to the unprotected glass in the SMCG residences."

98. The Crilly Report found that specific blast modelling was necessary because *"the exact stand-off distances"* and *"the maximum size of VBIED likely to gain encroachment or penetration along the boundary perimeter"* needed to be known to be able to advise on mitigation measures:

"During a call on the 25th of February 2021, Cundall were asked what the impact of a VBIED would be on SMGC when detonating at the wooden fence line by David Clarke. The apparent and inferred advice given by Cundall was that:

- *This would be a 'medium hazard' as Cundall stated on the call there was more than 20m stand-off between the fence and the SMGC residences.*
- *Normal household curtains would protect residents against flying plate glass.*
- *Embassy House has bomb blast protection laminated glass to protect their residents.*
- *The SMGC residential buildings would only suffer minor cracks.*
- *The only injuries to residents would be some temporary hearing loss.*
- *Cundall had not conducted any blast modeling or assessment on the collateral damage to SMGC from a VBIED directed against Embassy House from the SMGC car park as potential damage was considered to be minimal*
- *Cundall had not conducted any blast modeling or assessment on the collateral damage to SMGC from a VBIED directed at the Embassy House East Smithfield Street service and car park entrance and the Embassy House Royal Mint Street car park exit.*

It is the opinion of this review that the exact stand-off distances should be known before giving such important advice and deciding what further assessment, modelling and then mitigation measures should be taken. The assessment should also consider the maximum size of VBIED likely to gain encroachment or penetration along the boundary perimeter. In so doing, as specialists in blast engineering, Cundall can conduct such assessments and modelling as directed…."

<u>The Inspector's Report</u>

99. The Inspector's Report summarised the RMCRA's security concerns related to terrorism and considered the recommendations in the Crilly Report, but ultimately concluded that *"the package of security measures proposed would be wholly proportionate to the proposed use of the site"*:

"<u>Terrorism</u>

13.136 RMCRA, FOSKD and TRA all raise significant concerns in respect of the potential threat from terrorism arising from the proposed embassy use and the safety of the neighbouring residents in which they represent [10.14, 10.131-10.136,10.188].

13.137 In particular, RMCRA commissioned the Crilly Consulting: Security Design Peer Review (referenced as the Crilly Report) to assess the application proposals in terms of security impacts. This document was effectively adopted by FOSKD and TRA. This document concludes that the site would be attractive to terrorists as an iconic and symbolic site and that the estate *will be located within a 'collateral damage zone.' It also identifies a number of specific vulnerabilities in the sites security design.*

13.138 The evidence within the Crilly report is challenged by the applicant's security witness, and each have sought to discredit the other in terms of expertise and the methodology of assessment of the likelihood of a terrorist attack. At the heart of this is a disagreement in terms of the level of threat that the proposed embassy poses and the resultant effects on neighbouring residents.

13.139 Whether or not a specific threat would arise from the proposed use of the site, both in terms of an embassy, or a Chinese Embassy is somewhat academic; the threat to the UK from terrorism is currently assessed as being 'substantial', meaning an attack somewhere in the UK is 'likely.'[237] *Terrorist attacks are serious, devastating the lives and communities affected by them and in light of the terrorist threat level, it is right to consider this matter seriously.*

13.140 For planning, the NPPF requires appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security [6.33]. It is also recognised by the LP [6.28]. Fundamentally, the policy basis relates to design matters and designing out crime and reducing risk.

13.141 The site has a particularly close relationship with neighbouring residential properties at St Mary Grace's Court, not least as this actually forms part of the wider site [10.3-10.4]. However, in terms of neighbouring residential properties being in a collateral damage zone, terrorist attacks are indiscriminate in their nature and have far reaching and deadly consequences. It is an unfortunate and unfathomable truth that if such an attack were to happen, residents would be vulnerable. But residents would be vulnerable should any attack take place in this location, regardless of its use.

13.142 I agree with the applicant that planning permission should not be blocked simply on the basis of a potential terrorist threat; if that was the case then nothing would ever be approved [8.19].

13.143 It is important to note here that the MPS have not objected in respect or terrorism concerns; even their original objections did not make any specific response on this, although I note that the MPS letter of 14 November 2024 notes the Crilly report and states that the vulnerability of residents at St Mary Grace's Court should not be discounted. In making their comments on the applications, FCDO/HO have also not raised any objections relating to terrorist activities.

13.144 Nonetheless, in line with planning policy, it is important that appropriate and proportionate steps are taken to secure mitigation for terrorist related threats. It is also important to assess other general security impacts, as part of considering matters of heathy and safe communities in the round. The detailed security design was not within the scope of the applicant's security witness' evidence. This was covered by the scheme architect's evidence, principally because it was all considered as an integral part of the scheme design process, which is how it should be.

[…]

Security Measures

13.146 In terms of mitigation measures for safety and security, these would include HVM bollards and planters surrounding the site, including to the footbridge access to Embassy House along Cartwright Street. The measures would also involve contributions towards new CCTV and street lighting.

[…]

13.148 By their very nature, embassies also have their own relatively high security measures, as opposed to other uses. Public access is limited and there would be security measures at the various entry points into the site as well as within the site. This would also include the bridge access to Embassy House from Cartwright Street.

13.149 The vulnerability and weaknesses identified in the Crilly report include the proposed wooden fence to the rear of the site. This would replace an existing fence which is around 1m in height with a security rated wooden fence which would vary in height between 1.1-3m. In light of this, and also given the level differences between the rear of St Mary Grace's Court and the service access road, the scaling of the fence would be difficult. As acknowledged by the applicant, appropriate treatment could also be applied to the fence to address concerns relating to arson. A proposed condition relating to details of security measures to the undercroft of St Mary Grace's Court would also ensure security measures are assessed and implemented.

13.150 No fence would be provided to the rear of the dwellings which are located at the corner of Cartwright Street and East Smithfield as these would be located adjacent to the secure access point for the service road.

13.151 In making changes to the scheme design based on UK fire regulations, the applicant has also clearly demonstrated their commitment to ensuring safety and there is no reason to believe that the fire strategy, which would be subject to condition would not consider safety for all affected. Whether terrorist groups could exploit the strategy would go beyond a reasonable planning consideration.

[…]

<u>*Conclusions on other security considerations*</u>

13.156 Overall, I consider that the package of security measures proposed would be wholly proportionate to the proposed use of the site. The policy objectives set out in LP policy D11 as well as paragraphs 102 and 135(f) of the NPPF would be met [6.28, 6.30-1 & 6.33].”

<u>Submissions of the parties</u>

100. Mr Henderson, who led on this Ground for the Claimant, submits that it was procedurally unfair for the SSHCLG to take into account the Security Statement and Blast Assessment without sharing these documents with the RMCRA.

101. At Paragraph 17 of the Decision Letter, SSHCLG considers Rule 17(5)(b) of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, which provides that:

“*17. — Procedure after inquiry*

[…]

(5) If, after the close of an inquiry, the Secretary of State—

(a) differs from the inspector on any matter of fact mentioned in, or appearing to him to be material to, a conclusion reached by the inspector; or

(b) takes into consideration any new evidence or new matter of fact (not being a matter of government policy),

and is for that reason disposed to disagree with a recommendation made by the inspector, he shall not come to a decision which is at variance with that recommendation without first notifying [in writing][1] the persons entitled to appear at the inquiry who appeared at it of his disagreement and the reasons for it; and affording them an opportunity of making written representations to him or (if the Secretary of State has taken into consideration any new evidence or new matter of fact, not being a matter of government policy) of asking for the reopening of the inquiry."

102. The SSHCLG expressly considered the statutory duties that applied to him in circumstances where new evidence or facts were taken into account, which is a clear indicator that the SSHCLG took new material, namely the Security Statement and Blast Assessment, into consideration.

103. The RMCRA suffered material prejudice because they were not afforded the opportunity to make representations on the risks to, and mitigations for, St Mary Graces Court beyond what was available in the Crilly Report.

104. Mr Henderson identifies five points in the Blast Assessment that are new and would have been important to the RMCRA in making their representations: (i) the R1 rating; (ii) the technical assessment of glazing; (iii) mitigation measures, including the need for a blast wall; (iv) the technical and impartial nature of the report; (v) the striking and unexplained differentiation between the mitigation measures proposed for the new Embassy and those proposed for St Mary Graces Court.

105. As described in the second witness statement of Mr David Edward Lake, Chairman of the RMCRA:

"[H]ad RMCRA had sight of the Security Statement and Blast Assessment before the SSHCLG's decision to grant planning permission, we would have written to the SSHCLG to make the following points:

a. We would have argued that on the basis of the disclosed material, this was not an in principle appropriate location for the proposed embassy.

b. We would have said that all of the mitigation measures recommended in the Security Statement and Blast Assessment should be secured, and that without them the development would be unacceptable (leaving aside the in principle argument).

c. We would have said that the proposed development, especially absent the recommended mitigation, breaches:

i. National Planning Policy Framework ("NPPF") paragraph 102(a) […]

ii. NPPF paragraph 135(f) […]

iii. London Plan Policy D11 […]"

106. Similarly, Mr Andrew Williams, a director of Crilly Consulting Limited, says in his first and second witness statement that he would have raised the points referred to above, had he seen the Security Statement and Blast Assessment before writing the Crilly Report.

107. The Claimant relies on *Fairmount Investments Ltd v Secretary of State for the Environment* [1976] 1 WLR 1255 (HL), where a company successfully challenged the demolition of their property on the basis of procedural unfairness. The issues discussed at the Inquiry were the walls and the floors. But when the Inspector published the report, he confirmed the order of the local authority on the basis of defective foundations, which were not mentioned at the Inquiry. That decision was upheld by the Secretary of State and then overturned by the court. Viscount Dilhorne found that it was procedurally unfair and prejudiced the respondents not to have given them the information about the foundations, see 1260F.

108. The Claimant also points to *Jory v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 2724 (Admin); [2003] JPL 549, where the Inspector amended the conditions after the Inquiry and only sought comment from the developer and the planning authority, and not the claimant. Sullivan J said at [40]: *"[E]lementary fairness demanded that the claimant should also be given an opportunity to comment on his proposals."* He also stated at [32]: *"[W]hile some issues raised at planning inquiries or hearings may be of less immediate concern to local residents, this issue was of vital importance to the claimant and his fellow local residents."*

109. In addition, Mr Henderson pointed to a well-known passage in *R. (Osborn) v Parole Board*, where Lord Reed stated at [67]-[68]:

> "*67 There is no doubt that one of the virtues of procedurally fair decision-making is that it is liable to result in better decisions, by ensuring that the decision-maker receives all relevant information and that it is properly tested. As Lord Hoffmann observed however in Secretary of State for the Home Department v AF (No 3) [2010] 2 AC 269, para 72, the purpose of a fair hearing is not merely to improve the chances of the tribunal reaching the right decision. At least two other important values are also engaged.*
>
> *68 The rest was described by Lord Hoffmann (ibid) as the avoidance of the sense of injustice which the person who is the subject of the decision will otherwise feel. I would prefer to consider first the reason for that sense of injustice, namely that justice is intuitively understood to require a procedure which pays due respect to persons whose rights are significantly affected by decisions taken in the exercise of administrative or judicial functions. Respect entails that such persons ought to be able to participate in the procedure by which the decision is made, provided they have something to say which is relevant to the decision to be taken."*

110. Mr Henderson submits that the Inspector took a "uniform" approach to the buildings around the Site and didn't consider the particular vulnerability of St Mary Graces Court. Paragraph 13.136 of the Inspector's Report states that *"RMCRA, FOSKD and TRA all raise significant concerns in respect of the potential threat from terrorism arising from the proposed embassy."* The Inspector did not distinguish those residents close to the Embassy.

111. It is irrelevant that the Officers' Reports contained summaries of the Blast Assessment and were readily available to the RMCRA, because those summaries did not contain the most important parts of the Blast Assessment. Without the Blast Assessment the RMCRA had no technical assessment supporting its request for mitigation measures and could not address the particularised R1 risk identified in the Blast Assessment.

112. Mr Moules on behalf of the Defendant submits that it was not procedurally unfair for the SSHCLG to decline to circulate the Security Statement and Blast Assessment for comment before making his decision because the critical information in those documents was already before the Inquiry, most notably in the Officers' Reports.

113. It is wrong for the Claimant to say that the Inspector and SSHCLG took a "uniform" approach to the buildings. The Inspector considered *"vulnerability and weaknesses identified in the Crilly*

report" and specifically St Mary Graces Court at paragraph 13.149. Likewise, the SSHCLG highlights St Mary Graces Court at paragraph 56 of the Decision Letter: *"should there be a terrorist attack, neighbouring residential properties, in particular those at St Mary Grace's Court, would be vulnerable"*.

114. Mr Moules distinguishes the cases of *Fairmount* and *Jory* because they both involved the decision-maker positively relying on information that was not available to the interested parties during the Inquiry. In contrast, in this case, the information in the Blast Assessment and Security Assessment was substantively available to the RMCRA.

115. The Crilly Report provided the specific arguments about St Mary Graces Court for the Claimant to advance all the arguments before the Inspector and the SSHCLG.

116. Mr Moules brought the following documents to the attention of the court:

117. First, RMCRA's Statement of Case dated 13 December 2024, which summarised the Crilly Report and the potential impact on the residents.

118. Second, the Claimant's written representations to the Inquiry dated 11 February 2025, which repeated the submissions made in the Statement of Case and added:

"56. In order to consider the context of the site fully, and the concerns raised by RMCRA and others, the Inspector is invited to visit the following:

- *East Smithfield residential block – this is closest (8.5 metres from the boundary fence and final security check area).*
- *Cartwright Street – to view the plaza and the park opposite. Also to highlight the area where the security bollards are planned to be placed compared to the land the Applicant actually owns. This site makes it clear that there has been no consideration of the consequences for residents*
- *St Mary Graces - North car park to see the privacy issue raised by RMCRA, the useless wooden security fence and how close the two buildings are."*

119. Third, on 4 February 2025, Mr Williams of Crilly Consulting Limited submitted a letter to the Planning Inspector reiterating some of the points raised in the Crilly Report:

"I wonder if the CTSA is aware that because of a blast assessment, the Applicant designed bomb blast walls and reinforced building design and glazing to protect from a blast at the service road entrance that directly abuts SMGC.

If according to the CTSA and Applicant's evidence, there is a low risk or remote chance of a vehicle bomb attack why does the CTSA advocate HVM measures and the Applicant design in HVM measures and their own bomb blast wall?

Why have the residents of SMGC not been afforded the same protection, especially as SMGC is an asset owned by the PRC and the PRC is the Superior Landlord to the residents of SMGC.

[…]

The boundary treatment along the border with St Mary Graces Court has not been comprehensively assessed. Original consultation with RMCRA was that any acceptable eastern boundary would need to replace the wooden fencing with a suitable bomb blast wall and their *homes and windows reinforced against bomb blast the same as the proposed Embassy has reinforced their buildings and designed bomb blast walls to protect the Embassy."*

120. Fourth, on 18 August 2025, the RMCRA wrote to the SSHCLG (in response to a request for further information made after the inquiry and in advance of the decision letter) and reiterated its position on the security concerns and the lack of specific protection for St Mary Graces Court.

121. Fifth, on 22 December 2025, the Claimants wrote again to the SSHCLG (in relation to a complaint that RMCRA made about the PRC's security expert, Mr Nicholas Aldworth). They referenced meetings that the RMCRA held with Cundall (the security firm responsible for preparing the Security Statement) and summarised the Crilly Report again.

122. In respect of the above, the Defendant submits that there was no procedural unfairness because the Claimant had already made all of the representations that it says it would have made if it had had access to the Blast Assessment.

123. Finally, the Defendant submits that *Simplex GE (Holdings) Ltd v Secretary of State for the Environment* [2017] P.T.S.R. 1041 applies as it would have made no difference to the outcome if those documents had been circulated to the parties, as expressly stated by the SSHCLG at paragraph 17 of the Decision Letter. It is unlikely that the SSHCLG would have reached a different conclusion from the Metropolitan Police Service's CTSA and the LPA. It was within the reasonable judgment of the SSHCLG, relying on expert bodies, to conclude that the security measures were proportionate and compliant.

Conclusion on Ground 2

124. This Ground is arguable, because those documents were not seen by the Claimant and they therefore could not specifically refer to them, but it does not succeed. There was no material prejudice to the Claimant from their not having sight of the Security Statement and the Blast Assessment before the Decision.

125. The Security Statement is a very short document which contains no substantive information which was not in the public domain. Indeed, the Security Statement has less detail on some of the security proposals than was included in the DAS.

126. In those circumstances the Claimant could make all the relevant submissions without sight of the Security Statement. The contrast between this case and *Fairmount* is apposite. In *Fairmount* the objector was materially prejudiced because a new issue was raised of which they had no knowledge and they could not respond. In the present case the Security Statement raised no important new issue, and there was therefore no material prejudice.

127. The case in respect of the Blast Assessment is stronger but having considered the documentation and the history of the representations as a whole, again there was no material prejudice to the Claimant.

128. As is set out in detail above, much of the conclusions of the Blast Assessment is referred to in the two Officers' Reports, and therefore the relevant information was in the public domain.

129. Mr Henderson places reliance on Arup's assessment that St Mary Graces Court was in the R1 category, and that if there was a VBIED attack at the rear of the Site, then there could be very significant damage and fatalities at St Mary Graces Court. In the light of that material, it is very understandable that the residents are highly concerned about the risk. However, the conclusions in the Blast Assessment are, in truth, doing no more than acknowledging the obvious point that

St Mary Graces Court is the closest building to the Site, and the only residential building that is not separated from the Site by a main road. That it will be the building with the greatest impact if there were to be a VBIED is fairly obvious.

130. The critical point in respect of the Inspector and SSHCLG's assessment was their reliance on the view of the CTSA that an attack of that nature and at that location was relatively unlikely, for the reasons fully explained in the Inspector's Report and the SSHCLG's Decision Letter. The Blast Assessment did not assess the likelihood of an attack by VBIED at the rear of the Site; it simply assumed such an action and then assessed the impact of the blast. Therefore the reason why the SSHCLG did not either refuse permission because of the impacts raised in the Crilly Report (and supported by the Blast Assessment), or accept the level of mitigation sought, did not relate to the Blast Assessment, but rather to the CTSA's assessment that the risks, while serious, were unlikely to materialise.

131. Therefore, the points raised by Mr Henderson at paragraph 104 above, when properly analysed, would have added nothing to the SSHCLG's consideration.

132. In terms of the substantive points in the Blast Assessment about stand-off distances, collateral damage, and the lack of a protective blast wall, these are all points raised by the Crilly Report. The references to the relevant parts of the Crilly Report are set out at paragraph 93-98 above. The Claimant could therefore make full submissions upon them and was not materially prejudiced by not having sight of the Blast Assessment.

133. To the degree the Claimant argues that their submissions could have been supported or reinforced by the Blast Assessment, which was written by an independent expert, the relevant information was clear from the Officers' Reports, which were in the public domain.

134. It is true that the Blast Assessment contains more detail regarding mitigation measures. But again, the SSHCLG had already concluded that the risk was low in reliance on the view of the CTSA, and so he did not need to address mitigation measures.

135. The Decision Letter is clear that the Blast Assessment was not material to the SSHCLG's consideration because it added nothing to the matters he had already taken into account. This entirely accords with our analysis that the important material from the Blast Assessment was already in the public domain and fully dealt with. This again shows the critical distinction from *Fairmount*, because there was no new material here the absence of which made the Claimant's position unfair.

136. Mr Henderson relies upon a perception of unfairness and the principle in *R. (Osborn) v Parole Board* that it is important to avoid a sense of injustice. However, where on analysis the Claimant did have the relevant information, and was not deprived of any ability to respond to the important evidential points, there are no grounds for a sense of injustice.

137. For all these reasons I find that there was no unfairness to the Claimant by reason of these documents not having been disclosed.

138. Finally, it is highly likely that, even if the Claimant had seen the two reports and made representations upon them, it would not have made any difference to the outcome. As is explained, the SSHCLG already had all the relevant information and reached a clear conclusion on the level of risk that a blast would materialise. Therefore, whatever additional submissions that the Claimant had made about blast damage, it is highly unlikely that the SSHCLG would have reached a different conclusion. In those circumstances *Simplex* applies.

Ground 3

139. The Claimant submits that the SSHCLG erred in granting permission for the proposed Embassy on the basis of redacted plans. This Ground has three limbs:

a. The SSHCLG committed an error of law in breach of Article 7(1)(ii) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (**"the DMPO"**), which requires an application for planning permission to be accompanied by *"any other plans, drawings and information necessary to describe the development which is the subject of the application"*;

b. The SSHCLG failed to take into account a mandatory material consideration;

c. The SSHCLG made an irrational decision.

140. When the PRC applied for planning permission and listed building consent in 2024, the application included over 100 plans, including 52 marked as "redacted".

141. On 6 August 2025, the SSHCLG wrote to the PRC, Home Secretary and Foreign Secretary, and the interested parties to the Inquiry requesting further information about the redacted drawings in the planning application and inviting representations on the matter.

142. On 20 August 2025, DP9 (on behalf of the PRC) responded to the SSHCLG. Of the 52 drawings that were redacted, the PRC "un-redacted" 9 of them, which related to the roof plan, the staff accommodation layout at Embassy House, the Site plan, and the outdoor renovation project on Cartwright Street.

143. Justification for the remaining 43 redactions was provided in a "Consolidated Drawing Schedule", which set out that:

a. 24 out of the 43 plans did not show any use-information for all of the rooms. Those related to the Johnson Smirke building, Seaman's Registry building, Cultural Exchange building, and parts of the Embassy House and Entrance Pavilion. The PRC stated that more detailed information was not relevant to the Inquiry (*"Use information for remaining rooms (areas with no public access) is not shown, which is however irrelevant to the planning"*);

b. In relation to the remaining 19 drawings for the North and South Embassy House, the PRC stated that enough information had already been provided about these rooms (*"All information has been provided before the Inquiry. Layouts of the units are shown in separate Unit Layout Plan"*).

144. The DP9/PRC letter concluded that *"The Applicant [PRC] considers the level of detail shown on the unredacted plans is sufficient to identify the main uses of the principle rooms. In these circumstances, we consider it is neither necessary nor appropriate to provide additional more detailed internal layout plans or details"*. It set out in detail the PRC's objection to providing further information on the internal layout:

"We note that concerns have been raised about the fact that some drawings have been marked as being redacted.

As the SoS letter notes, this matter was not raised at the Inquiry by the Inspector or any stakeholders or parties making representations. Similarly, the matter was not raised by the London Borough of Tower Hamlets ('LBTH') during the course of the applications.

However, our clients are pleased to provide further information and to clarify the matters identified in the SoS letter, to the extent that they are material planning considerations and relevant to the decision.

[…]

As a matter of principle, as the SoS notes, the grant of planning permission and listed building consent must make clear to all interested parties what has and has not been permitted. In this case, there can be no possible ambiguity as to the nature of the intended use of the premises, the floorspace proposed, the scale and external appearance of the proposed buildings and the operational effects of the development within its context e.g. traffic generation etc. All these matters were addressed in detail in the application and at the Inquiry.

In the case of the listed building consent application, the details of all the works to the listed buildings have been provided in line with common practice. The proposed drawings, along with supporting documentation, are sufficiently clear as to the works proposed which would affect the character of the building as one of special historical/architectural interest, notably the entrance hall, stairwell and façade of the Johnson Smirke building and façade of the Seaman's Registry.

The Applicant does not consider that, as a matter of principle, that it is necessary or appropriate to provide full internal layout plans (which do not affect the external appearance, listed building matters or material planning considerations) in order to understand what has been permitted. An obvious parallel would be a modern office building, where planning applications commonly show simplified floorplates. With the spatial arrangement of such as desk layouts, internal partitions, break out areas, or associated storage areas etc being matters of internal layout driven by operational needs and not in any event subject to planning control or material consideration. Therefore, the Applicant asserts that the level of detail provided is entirely consistent with established planning norms and sufficient for the purpose of understanding what has been permitted.

Furthermore, when read alongside the supporting documents, the proposals provide a clear and proportionate level of detail, including the intended use of individual floors. The Design and Access Statement in particular provides a more granular explanation of how each of the buildings will be used and how it has informed the proposed layout.

[…]

Notwithstanding the above, and in order to provide a comprehensive response to the matters highlighted by the SoS, the Applicant has instructed David Chipperfield Architects, to consolidate the 43 drawings listed in Annex A of the SoS letter […]

The Applicant considers the level of detail shown on the unredacted plans is sufficient to identify the main uses of the principle rooms. In these circumstances, we consider it is neither necessary nor appropriate to provide additional more detailed internal layout plans or details."

145. In response to the DP9/PRC letter dated 20 August 2025, some of the interested parties raised concerns about the revised drawings.

146. On 6 September 2025, RMCRA submitted a legal opinion written by Lord Banner, which contended that the redactions meant that there was *"ambiguity in relation to the development for which planning permission is sought"* and that *"ambiguity relates to matters which are capable in law of being material planning considerations"* such that planning permission could not lawfully be granted on the basis of the plans.

147. The relevant parts of the Decision Letter for the purposes of this Ground are paragraphs 89-99, see paragraphs 24-25 above.

148. The first limb of this Ground is concerned with article 7(1)(ii) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (**"the DMPO"**), which provides that:

> *"7.— General requirements: applications for planning permission including outline planning permission*
>
> *(1) Subject to paragraphs (3) to (5), an application for planning permission must—*
>
> *(a) be made in writing to the local planning authority on a form published by the Secretary of State (or a form to substantially the same effect);*
>
> *(b) include the particulars specified or referred to in the form;*
>
> *(c) except where the application is made pursuant to section 73 (determination of applications to develop land without conditions previously attached) or section 73A(2)(c) (planning permission for development already carried out) of the 1990 Act1 or is an application of a kind referred to in article 20(1)(b) or (c), be accompanied, whether electronically or otherwise, by—*
>
> > *(i) a plan which identifies the land to which the application relates;*
> >
> > *(ii) any other plans, drawings and information necessary to describe the development which is the subject of the application."*

149. Lord Banner submits that the plans must describe the entirety of the development for the purposes of article 7(1)(ii). The qualifier "necessary" in article 7(1)(ii) does not support an incomplete approach; to the contrary, it is "necessary" to describe the proposed development completely.

150. At paragraph 98 of the Decision Letter, the SSHCLG wrongly limited himself to asking whether the information provided was sufficient to understand any *"material adverse planning impacts",* rather than asking whether there was sufficient information to describe the development, as required under article 7(1)(ii). Lord Banner submitted that describing the development was particularly important given that the proposed Embassy is a sui generis use class.

151. Under Ground 3(b), Lord Banner submits that the redacted plans were a mandatory material consideration given the statutory scheme of the DMPO and the TCPA 1990 (alternatively, on the basis that they were so obviously material that it was irrational to leave them out of account, given they arose directly from the Development).

152. Lord Banner pointed to a Record of Advice sent from the London Fire Brigade to the SSHCLG on 6 January 2025, which noted that *"The submitted plans have numerous areas that are unclear with 'greyed out' sections. Therefore, our comments on this submission are limited to the documentation available."* Lord Banner stresses the importance of understanding the uses of each room, particularly in assessing fire safety. He submits that if the rooms have uses such as kitchens, laundry rooms, or event spaces then this could be material to fire safety considerations. The Fire Brigade would need permission to come onto the Site, given the inviolability, so a comprehensive understanding of fire risk and room use was of critical importance. It is no answer to rely on condition 31 preventing overnight use (which was imposed for fire safety purposes) given that it is unenforceable.

153. Under Ground 3(c), the decision was irrational in circumstances where the approved plans were known to be redacted and incomplete, there was a clear and realistic risk that the redacted details would give rise to material planning considerations, and the PRC had resisted the imposition of compliance conditions to check the internal build.

154. Mr Williams, who led on this Ground for the Defendant, submits that article 7(2) DMPO specifies that any plans or drawings should be drawn to an identified scale and, in the case of plans, to show the direction of North. Beyond this stipulation, the DMPO does not prescribe the level of detail to be provided on those plans or drawings. What information is "necessary" to describe the development is highly fact-specific: it will depend (inter alia) on the nature and scale of the proposal, as well as the context. In this case, there was sufficient material provided to understand the use-case, including a detailed DAS.

155. Further, the redacted plans were not a mandatory consideration because they were not materially incomplete. At no point prior to or during the Inquiry did the Claimant, or any other party, raise a concern about the adequacy of the information provided in the plans or other application documents.

156. The Inspector described the use of each building in detail; and where she considered there was a material planning risk, conditions were imposed (such as condition 31 preventing use for overnight accommodation). In addition, the fire concerns raised by the London Fire Brigade were dealt with in the Statement of Common Ground between the LPA and PRC dated 12 February 2025, which outlined fire safety conditions and stated: *"9.3.1 It is agreed that the submitted Fire Safety Statement and the additional improvements meet the requirements of London Plan Policy D12 and relevant Regulations, and compliance would be secured by planning condition."*

157. The SSHCLG noted at paragraphs 102-103 of the Decision Letter the *"greyed out areas"* highlighted by the London Fire Brigade. He said that, in light of the agreed conditions and fire strategy, the application made adequate provision for fire safety. All of these matters point to the fact that the decision-makers had sufficient information to assess the proposal.

158. Finally, Mr Williams submits that the SSHCLG's decision was not irrational. The SSHCLG was not required to take into account speculative and hypothetical uses in respect of individual rooms.

159. Returning to the Claimant's first argument, there is disagreement between the parties on whether compliance with article 7(1)(c)(ii) DMPO is a matter of judgement for the decision-maker or a matter for the court. Lord Banner contends that whether a planning application has the "necessary" information is a jurisdictional question for determination by the court.

160. The Claimant relies on <u>R. (North Norfolk Planning Watch Ltd) v North Norfolk District Council</u> [2017] EWHC 3345 (Admin); [2018] PTSR 768, a case where a local authority granted planning permission to the interested parties to demolish a property. The interested parties used the standard planning application form, rather than an enhanced form that was published on the local authority's website portal. The claimant challenged the permission on the grounds that (inter alia) the application did not comply with article 7(1)(a) DMPO.

161. The court held that article 7(1) required not only the use of the published form but also the provision of the particulars specified or referred to in the form, and any other particulars required to describe the development which was the subject of the application. However, where the applicant submitted a different form or particulars, that could be acceptable provided the form was to the same effect and the information was in fact supplied. Martin Rodger QC said at [70]: *"Given what they had been told it is inconceivable that the planning officers could*

properly have rejected the application as failing to provide the particulars demanded by article 7(1) and their own guidance."

162. Lord Banner submitted that North Norfolk showed that the question of whether the requirements of article 7(1) have been complied with is a "hard-edged" matter of interpretation for the court.

163. He also relied on R. (Trail Riders Fellowship) v Dorset County Council [2015] UKSC 18; [2015] 1 WLR 1406, a case concerning five applications to the surveying authority for map modifications. The maps were drawn to a scale of 1:50,000 but were printed at an enlarged scale of at least 1:25,000. The question was whether the maps complied with Regulations 2 and 8 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993, which required (inter alia) that an application for a modification order had to be accompanied by a map which (i) was drawn to the prescribed scale and (ii) which was not less than 1:25,000. The Court found that "drawn" should be given a meaning which embraced later techniques for the production of maps, synonymous with produced or reproduced. Lord Clarke JSC said at [18]-[20]:

"18 This is a short point. It involves the construction of two particular provisions which I have already set out.

[…]

20 On the ordinary and natural meaning of these provisions it appears to me that the map referred to in paragraph 1(a) of Schedule 14 is the map which must be drawn to the prescribed scale. Only one map accompanied each application. In each case it was the map produced as described above to a presented scale of 1:25,000 or larger, in that measurements on the map corresponded to measurements on the ground by a fixed ratio whereby a measurement of 1 cm on the map corresponds to a measurement of no more than 250 metres on the ground. Thus each such map was on a scale of not less than 1:25,000 and, in my opinion, satisfied regulations 2 and 8(2) of the 1993 Regulations. In my opinion each such map also satisfied paragraph 1(a) of Schedule 14 on the basis that it was drawn to the same scale."

164. Mr Williams submits that the question of compliance with article 7(1)(ii) DMPO is not a matter of construction for the court. It is an evaluative judgment on which different decision-makers, each acting rationally, might reach differing conclusions when applying the statutory criterion to the facts of a given case. In such a case, the proper role of the court is supervisory. Lord Mustill stated in R v Monopolies and Mergers Commission, ex p. South Yorkshire Transport Ltd [1993] 1 WLR 23 at p.32:

"[T]he criterion so established may itself be so imprecise that different decision-makers, each acting rationally, might reach differing conclusions when applying it to the facts of a given case. In such a case the court is entitled to substitute its own opinion for that of the person to whom the decision has been entrusted only if the decision is so aberrant that it cannot be classed as rational: Edwards v. Bairstow [1956] A.C. 14. The present is such a case. Even after eliminating inappropriate senses of "substantial" one is still left with a meaning broad enough to call for the exercise of judgment rather than an exact quantitative measurement. Approaching the matter in this light I am quite satisfied that there is no ground for interference by the court, since the conclusion at which the commission arrived was well within the permissible field of judgment. Indeed I would go further, and say that in my opinion it was right."

165. The point was reiterated in R (on the application of Assurant General Insurance Limited) v Financial Ombudsman Service Limited [2023] EWCA Civ 1049 at [45]:

"It is also important to bear in mind that many questions are not "hard-edged" and call for evaluation on matters of degree and opinion: see e.g. R v Monopolies and Mergers Commission,

ex p. South Yorkshire Transport Ltd [1993] 1 WLR 23, at 32 (Lord Mustill). In that case the statutory formula which had to be applied was whether an area was a "substantial part" of the United Kingdom. That was held not to be a "hard-edged" question but one that called for evaluation, a task that was for the primary decision-maker, subject to judicial review on conventional public law grounds."

166. In addition, the Defendant relies on R. v Secretary of State for Transport and the Regions, Ex parte Bath and North East Somerset DC [1999] 1 WLR 1759, a case relating to Regulation 3 of the Town and Country Planning (Applications) Regulations 1988, which is the provision that preceded article 7 DMPO and is worded in substantially the same terms. The question in Bath was whether the Secretary of State had jurisdiction to hear appeals in circumstances where a planning application had been rejected by the Local Planning Authority as invalid. Pill LJ said at p.542:

"[A] right of appeal does arise even when the local planning authority have formed the opinion that the application is invalid. The applicant is entitled to have the opinion of the Secretary of State on the question of validity. I reach that conclusion upon a purposive construction of the statutes and a consideration of the scheme as a whole.

[...]

Regulation 3 of the Regulations of 1988 does not purport to make the local planning authority the sole judge of what plans, drawings and information are necessary to describe the development. (In this respect, the council are on stronger ground on the Planning (Listed Buildings and Conservation Areas) Act 1990 which does include the expression "such other particulars as may be required by the [local planning] authority.")

[...]

Nothing in the judgment should be read as discouraging applicants for planning permission and listed building consent from providing appropriate detail with their applications or from co-operating with local planning authorities. Moreover, there could be requests for permission which are so deficient in form and substance that no reasonable local authority or Secretary of State could reasonably treat them as "applications" within the meaning of the legislation."

167. Mr Williams relies on Pill LJ's description of the assessment of the requirements under Regulation 3 (by analogy for our purposes, article 7 DMPO) as an "opinion" as recognising the evaluative judgement inherent in assessing sufficiency on the facts of each case.

168. Mr Williams submits that the same approach was followed in Parker v Secretary of State for Communities and Local Government [2009] EWHC 2330 (Admin).

169. Finally, Mr Williams relies on two EIA cases to underscore that it is for the planning decision-maker to determine whether the information provided gives a sufficient *"description of the development proposed"*, subject to challenge on Wednesbury grounds only: R. v Rochdale MBC, Ex parte Milne [2001] Env. L.R. 22 at [95] and [106]-[110]; Atkinson v The Secretary of State for Transport [2007] Env. L.R. 5 at [31]-[32].

170. North Norfolk does not assist the Claimant because it concerned a different question: whether non-standard forms for planning applications were valid if they had substantially the same effect as the standard form. North Norfolk is therefore not authority for the proposition that all issues raised under article 7(1) are necessarily a matter of law for the court rather than a matter of judgement for the decision-maker. Similarly, Trail Riders concerned a matter of statutory construction for the court, not a matter of evaluation. Even if the Claimant were correct that article 7(1)(ii) raised a "jurisdictional question", that does not compel the conclusion that it

raises a hard-edged question for the court to determine, see Singh LJ in *R (on the application of AGIL) v Financial Ombudsman Service Limited* [2023] EWCA Civ 1049 at [39].

171. In any event, the Claimant's construction of article 7(1)(ii) would be unworkable because it would mean that, in all planning cases, it would be open to an individual to challenge the permission on the grounds that there was insufficient information.

172. Mr Williams therefore submits that the only way the Claimant can succeed on this Ground is by convincing the court that the decision is irrational on public law grounds.

Conclusion on Ground 3

173. This Ground is not arguable. The question under article 7 DMPO as to whether information is "necessary" to describe the development is plainly one for the decision-maker and not the court. The decision-maker has to make a planning judgement as to whether further information is required in order to decide whether to grant permission, and if so with what conditions and obligations. That is a task involving consideration of planning issues, which is for the decision-maker.

174. That conclusion follows from the Claimant's own submissions. Whether, on the facts of a particular application, the use of specific rooms is important for the assessment of fire risk will involve taking into account a range of planning considerations, which will be for the planning decision-maker, whether that is the LPA, Inspector or SSHCLG. The error in the Claimant's approach is obvious if one has regard to the scope of the submission. In any planning application before an LPA it would be open to an objector to challenge the decision and say it was for the court to decide if further information had been required in the determination of the application.

175. The question under article 7 DMPO was necessarily one that involved planning judgement, and as such falls within the principle set out by Lord Mustill in *Monopolies and Mergers* and Singh LJ in *AGIL*. *Trail Riders* concerned a hard-edged issue as to whether the scale of the plans accorded with the requirement set out in the statute. *North Norfolk* was also concerned with a different issue, both in law and substance, namely whether a form issued by the LPA was substantively the same as the statutory form. Neither of those issues are analogous to a planning judgement as to whether further information is "necessary".

176. The fact that the application here was for a sui generis use (Embassy use) makes no difference to this argument. The decision-maker must consider the use being applied for, whether it is one covered by the Use Classes Order or a sui generis use, and decide whether further information is required.

177. For this reason, Grounds 3(a) and (b) are unarguable.

178. Ground 3(c) is also unarguable. There was nothing irrational in the SSHCLG's decision that no further information was required. It is wholly conventional for the use of individual rooms in a development not to be described. Unless expressly conditioned it is open to the developer/occupier to change the use of the rooms within the development. There is nothing on the face of an embassy use which would justify conditioning the use of individual rooms in the way suggested by the Claimant.

179. The fact that Lord Banner relies on uses such as kitchen, laundry and event space uses shows the lack of merit in the argument. These are wholly conventional uses in an office development, and there is no apparent reason why that would be any different in an embassy use. There is no obviously material additional fire risk which would make it irrational for the SSHCLG not to require the identification of the individual rooms.

180. To the degree that there was a fire risk in the proposed embassy as a whole, as there is in any building, that was exacerbated because of inviolability, that was something the SSHCLG had fully considered.

181. The Claimant's reliance on the fact of inviolability does not change the conclusion above. The PRC under Article 41 of the Vienna Convention have an obligation to comply with domestic law, and that would include allowing the Fire Brigade onto the Site if there was a fire. The SSHCLG had already concluded that he had no ground to refuse permission on the basis of inviolability.

Ground Five

182. The Claimant submits that the SSHCLG breached his positive obligations to protect the residents' rights under Article 10 (freedom of expression); Article 11 (freedom of assembly); and Article 1 Protocol 1 (**"A1P1"**) (protection of property) ECHR.

183. The relevant parts of the Decision Letter for the purposes of this Ground are paragraphs 42-51 and 49-50, see paragraphs 19-20 above.

184. Mr Abraham, who made submissions on this Ground for the Claimant, set out the argument in the following stages: the SSHCLG had knowledge of the risks to the residents' Convention rights; the SSHCLG had positive obligations to protect those rights; the SSHCLG failed to identify the risks and to carry out an appropriate Convention compliant balancing exercise to determine how to protect the rights in issue.

185. For the first stage he relied upon *Plattform "Artze fur das Leben" v Austria* [1988] EHRR 204. At [34] the ECtHR said:

> *"34. While it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used (see, mutatis mutandis, the Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A no. 94, pp. 33-34, § 67, and the Rees judgment of 17 October 1986, Series A no. 106, pp. 14-15, §§ 35-37). In this area the obligation they enter into under Article 11 (art. 11) of the Convention is an obligation as to measures to be taken and not as to results to be achieved."*

186. The requirement to take *"reasonable and appropriate measures"* is not disputed by the SSHCLG. However, it is relevant that in *Plattform* the Austrian authorities had had considerable notice of the planned anti-abortion march and of counter demonstrations, see [9]-[11]. The ECtHR found that the claim was not arguable on the grounds that the police had been engaged and the authorities had not failed to take reasonable and appropriate action, see [38]-[39].

187. Mr Abraham also relied on *Lopez-Ostra v Spain* [1994] 20 EHRR 277 at [51]:

> *"51. Naturally, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health. Whether the question is analysed in terms of a positive duty on the State - to take reasonable and appropriate measures to secure the applicant's rights under paragraph 1 of Article 8 (art. 8-1) -, as the applicant wishes in her case, or in terms of an "interference by a public authority" to be justified in accordance with paragraph 2 (art. 8-2), the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, and in any case the State enjoys a certain margin of appreciation. Furthermore, even in relation to the positive obligations flowing from the first*

paragraph of Article 8 (art. 8-1), in striking the required balance the aims mentioned in the second paragraph (art. 8-2) may be of a certain relevance (see, in particular, the Rees v. the United Kingdom judgment of 17 October 1986, Series A no. 106, p. 15, para. 37, and the Powell and Rayner v. the United Kingdom judgment of 21 February 1990, Series A no. 172, p. 18, para. 41)."

188. Lopez-Ostra concerned severe environmental pollution impacting on local residents' quality of life (Article 8) and, they said, on their health (Article 3). There had been many years of complaints and of legal actions in Spain. The ECtHR found a breach of Article 8 but not of Article 3.

189. In Shortall v Ireland [2021] 50272/18 the ECtHR said at [47]-[49]:

"47. The Court has accepted that an applicant may be a potential victim in a range of cases. For example, it has accepted that an applicant enjoys victim status under Article 34 of the Convention where he was not able to establish that the legislation he complained of had actually been applied to him, on account of the secret nature of the measures it authorised (see Klass and Others, cited above, pp. 17-18, § 33), where a law prohibiting homosexual acts was capable of being applied to a certain category of the population, which included the applicant (see Norris v. Ireland, 26 October 1988, §§ 31-33, Series A no. 142), or where an alien's deportation had been ordered but not yet enforced and where enforcement of the order would have exposed him, in the receiving country, to treatment contrary to Article 3 (see Soering v. the United Kingdom, 7 July 1989, Series A no. 161) or would infringe his right to respect for his family life (see Beldjoudi v. France, 26 March 1992, Series A no. 234-A).

48. However, in order for an applicant to be able to claim to be a victim in such circumstances, he or she must produce reasonable and convincing evidence of the likelihood that a violation affecting them personally would occur; mere suspicion or conjecture is insufficient in this respect (see Centre for Legal Resources on behalf of Valentin Câmpeanu, cited above, § 101, and Tauira and 18 Others v. France, no. 28204/95, Commission decision of 4 December 1995, DR 83-B, p. 112 at p. 131)." [our emphasis added]

190. Mr Abraham submits that the residents of St Mary Graces Court have long said that they fear reprisals and the curtailment of their ability to oppose or protest against the PRC because of their actions opposing the proposed Embassy. He also relies on the evidence of the PRC taking action against known opponents, including an incident at a protest outside the Manchester PRC consulate in October 2022, where a protestor was taken into the building by security guards and was allegedly assaulted. Officials claimed diplomatic immunity and returned to China without the police being able to take any further action.

191. He relies on the fact that the PRC is the freehold owner of St Mary Graces Court, and as such is the residents' ultimate landlord. The residents are concerned that action may be taken against them in their position as tenants/leaseholders, and this will impact on their A1P1 rights, as well as their Article 10/11 rights.

192. The next stage of the Claimant's case is that once the SSHCLG had notice of the risks to Convention rights he was under a duty to act with due diligence to protect those rights. Mr Abraham relies on Giacomelli v Italy [2006] 59909/00 at [83]:

"83. A governmental decision-making process concerning complex issues of environmental and economic policy must in the first place involve appropriate investigations and studies so that the effects of activities that might damage the environment and infringe individuals' rights may be predicted and evaluated in advance and a fair balance may accordingly be struck between the various conflicting interests at stake (see Hatton and Others, cited above, § 128). The importance of public access to the conclusions of such studies and to information enabling

members of the public to assess the danger to which they are exposed is beyond question (see, mutatis mutandis, Guerra and Others, cited above, § 60, and McGinley and Egan v. the United Kingdom, 9 June 1998, § 97, Reports 1998-III). Lastly, the individuals concerned must also be able to appeal to the courts against any decision, act or omission where they consider that their interests or their comments have not been given sufficient weight in the decision-making process (see, mutatis mutandis, Hatton and Others, cited above, § 128, and Taşkın and Others, cited above, §§ 118-19"

193. Again, this was a case concerning serious environmental pollution, which had been occurring for many years, with a long-running impact on the applicant's Article 8 rights. Giacomelli refers back to Hatton v UK, which concerned night flights at Heathrow Airport and the longstanding impact that they had on the applicants' Article 8 rights.

194. At the third stage of his analysis, Mr Abraham submits that the SSHCLG failed to ask the correct questions in order to undertake a Convention compliant balancing exercise in the Decision Letter. The SSHCLG expressly excluded national security considerations in assessing the risk to the residents' Convention rights. He did not separately consider the nature of the residents' Convention rights, nor did he identify specific safeguards for those Convention rights. He simply relied on the Metropolitan Police Service at paragraph 48 of the Decision Letter in a wholly generic manner, and in effect "outsourced" his obligations under section 6 of the Human Rights Act 1998 to the Metropolitan Police Service. The SSHCLG failed to consider and balance the risk of the proposed Embassy being used as a site of transnational suppression, and the impact that would have on the local residents.

195. Mr Williams on behalf of the SSHCLG submits that, despite being represented at the Inquiry, the Claimant did not argue at the Inquiry that the grant of planning permission would engage the residents' Convention rights, and that a specific Human Rights Act balancing exercise had to be undertaken. The case was put entirely on the basis of a conventional planning balance. In those circumstances it is hardly surprising that the Inspector's Report and Decision Letter do not expressly undertake such a balance.

196. The SSHCLG did undertake a full planning balance, taking into account all the issues that the Claimant now argues engaged Convention rights. Chapman v UK [2001] 33 EHRR 18 establishes that there is a high bar for the court to interfere in a planning decision:

"[92] The judgment in any particular case by the national authorities that there are legitimate planning objections to a particular use of a site is one which the Court is not well equipped to challenge. It cannot visit each site to assess the impact of a particular proposal on a particular area in terms of impact on beauty, traffic conditions, sewerage and water facilities, educational facilities, medical facilities, employment opportunities and so on. Because planning inspectors visit the site, hear the arguments on all sides and allow examination of witnesses, they are better situated than the Court to weigh the arguments. Hence, as the Court observed in BUCKLEY, "in so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation", although it remains open to the Court to conclude that there has been a manifest error of appreciation by the national authorities."

197. Mr Williams also relies on Stevens v SSCLG [2013] EWHC 792 at [87], where Hickinbottom J considered the proper approach to proportionality in a planning decision:

"i) The application does not require a full merits review. It requires review on traditional judicial review grounds, together with consideration of whether the resulting decision engages article 8 and, insofar as it does, whether the adverse impact of the decision on the article 8

rights engaged is proportionate to the legitimate aims sought to be protected (including both the public interest, and the rights and interests of other individuals).

ii) In considering whether the decision breached relevant article 8 rights, the court is required to consider the merits, with appropriate scrutiny, but it should do so bearing in mind that the inspector's function, assigned to him by the statutory scheme and ultimately Parliament, is to consider the merits of all material considerations, including any article 8 rights that are engaged. The inspector is an expert and experienced, and acts in a quasi-judicial capacity, which each warrant a wide margin of discretion. He is acting in an area of social policy, which in itself attracts a wide margin of discretion. As a result, considerable deference ought to be attached to his conclusion.

iii) Proportionality is a question of substance and not form. If the inspector has clearly engaged with the article 8 rights in play, and considered them with care, given his wide margin of discretion, it is unlikely that the court will interfere with his conclusion on grounds of proportionality. If he has not – even if he has not referred to article 8 rights at all – on usual principles, the court will not quash his decision if his error is immaterial. If his error is material, then it is open to the court to find that the interference with the relevant human rights is in any event proportionate; or quash the decision."

198. This is entirely consistent with the analysis of the Supreme Court in *Shvidler v SSFCDA* [2025] WLR 346, which states at [123] that the court is required to *"attach special weight to the judgments and assessment of a primary decision-maker with special institutional competence"*.

199. In *JR123* [2025] AC 1256 the Supreme Court considered the correct approach to the proportionality balance in cases of alleged breach of a positive obligation. At [62] the court said:

"In the first place, the proportionality test in para 41 above has been formulated specifically for cases where negative obligations under article 8 restraining the state from interfering with the rights in the provision are concerned. It cannot be applied in the same way and with the same rigour where the question is whether the state is subject to a positive obligation to take steps to assist an individual to enjoy those rights. Although, as the authorities explain, the ultimate question in both cases is whether a fair balance has been struck between the rights of the individual and the rights of others and the interests of the general community, where it is asserted that a positive obligation exists that question is addressed in a more general and less formalised way. For the reasons we have given, on proper analysis the appellant's case is that he is owed a positive obligation by the state to adopt a different rehabilitation regime from which he would be capable of benefiting."

200. Mr Abraham seeks to distinguish *JR 123* because what the SSHCLG failed to do here was identify operational measures that would protect the residents' Convention rights. The failure to identify such measures is critical because once the Embassy is built and inviolability arises there will be very limited steps that the SSHCLG can take. Therefore, the full Convention rights assessment and balance had to be undertaken before planning permission was granted.

201. Mr Williams submits that, to the degree that any positive obligation arose, the SSHCLG fully took into account the relevant matters and did the appropriate balancing exercise. He therefore considered all matters which could be relevant to any positive obligations. The Inspector's Report considered:

a. The ability to protest at the Site and to protect safety at the Embassy at paragraphs 13.90-13.93 of the Inspector's Report;

b. The right to protest and the role of the Metropolitan Police Service at paragraphs 13.94-96 of the Inspector's Report. In particular, at paragraph 13.96 it is said:

"However, the MPS have a duty to police embassies and protest activities and it was confirmed at the Inquiry that the MPS would facilitate lawful protests and police them as necessary to make them safe for all involved. This evidence was given directly by the Deputy Assistant Commissioner and is clear and compelling."

c. The possibility of protests at the rear of the Site, in proximity to the residents, and the Metropolitan Police Service's position that this was fairly unlikely at paragraphs 13117-119 of the Inspector's Report, in particular paragraph 13.117:

"Turning to the risk of protest activity occurring to the rear of the application site, and causing disruption to the local residents who live in this area [10.23-24, 10.127], the MPS clarified their position in January citing that experience demonstrates that protesters are unlikely to congregate at the rear of the embassies if there is no access and no ability to be seen or heard by those inside."

d. The mitigation measures that could be put in place, including the Events Management Plan at paragraphs 13.122-124 of the Inspector's Report.

202. The SSHCLG fully considered both the protection of the right to protest at the Site and the safety of all concerned at paragraphs 46-51 of the Decision Letter. He was fully entitled to rely on the view of the Metropolitan Police Service, which is the body with the powers and duties to police protests and ensure public safety.

Conclusions on Ground 5

203. This Ground is arguable on the basis of the scope of the positive obligations in this particular situation, but it fails for a number of reasons. The argument that the SSHCLG needed to undertake a separate Convention balance was not advanced at the Inquiry, or in written submissions to the SSHCLG. Although some reference was made to the residents' human rights being impacted, there was no reference to either positive obligations or the need for a discrete Convention balancing exercise being required. That does not mean that the SSHCLG did not have to have regard to his Human Rights Act duties. However, it does explain why there is no separate reference in the Inspector's Report or the Decision Letter to a Convention balance having been undertaken.

204. For an applicant to be a victim for the purposes of the Convention, and therefore for any positive obligations to arise, they must *"produce reasonable and convincing evidence of the likelihood that a violation affecting them personally would occur; mere suspicion or conjecture is insufficient",* see *Shortall* at [48]. The Claimant here does not meet that test. The various residents' groups told the Inspector that they feared reprisals and the impact of protests, but there is nothing that amounts to reasonable and convincing evidence of interference with Convention rights. There was no evidence of any action by the PRC against the residents, even though they had strongly objected to the proposed Embassy and had been involved in protests. In terms of future fears there was nothing that went beyond the suspicion and conjecture referred to in *Shortall*.

205. The SSHCLG accepts that a positive obligation can in principle arise in advance of any actual breach. However, there has to be *"reasonable and convincing evidence"* of risk. The type of situation where such a positive obligation arises is shown in cases such as *Lopez Ostra* and *Plattform Artze,* where the State authorities had had considerable notice and evidence of the

relevant risks of breaches of Convention rights, which then gave rise to a positive obligation to act to protect rights. There is no equivalent evidence here of the likelihood of a rights violation.

206. The most specific evidence of risk related to the incident at the Manchester consulate. However, there is no specific risk from this incident to St Mary Graces Court or the residents. If there is such a generalised risk the UK Government would have to deal with it on a diplomatic level. The SSHCLG took into account the need to balance the right to protest and the protection of both protestors and residents at paragraphs 46-50 of the Decision Letter. The balancing of the various relevant factors, in the context of a planning decision, is one where the court will give the decision-maker a wide margin of appreciation, see *Chapman* at [92] and *Shvidler* at [123].

207. It was reasonable for the SSHCLG to rely on the advice of the Metropolitan Police Service, who had both the relevant statutory duties and expertise, that the disruption to local residents from protests would be limited at paragraphs 47-49 of the Decision Letter.

208. To the degree that RMCRA now raise the fear of reprisals, potentially through their status as tenants of the PRC, this was not raised before the Inspector at the Inquiry. In any event, the SSHCLG's reliance on Article 41 of the Vienna Convention, and other legal processes, at paragraph 10 of the Decision Letter, is applicable to this alleged risk. There is no evidence that would lead to a conclusion that breaches of Convention rights were a likelihood, as opposed to suspicion or conjecture. The SSHCLG was under no legal duty to set out any further specific reasoning in this regard.

209. For these reasons this Ground is arguable but fails.

Lord Justice Dingemans, SPT

210. I agree that this claim for statutory review should be dismissed for the reasons given by Lieven J. I have added this short additional judgment because it was apparent that the decision by the Secretary of State for Housing, Communities and Local Government (SSHCLG) to grant planning permission has caused real concern to the claimants, among others.

211. The relevant site, described by Lieven J in paragraph 3 of the judgment, is a historic site and it is apparent that many local residents, and others, do not want the site to be used for the embassy of the People's Republic of China (PRC). The decision to grant Diplomatic Consent for the embassy, subject to planning permission, was made in the Note Verbale dated 4 May 2018. The decision to grant planning permission, subject to conditions, was made by the SSHCLG on 20 January 2026. The function of this court is not to review the decision of the SSHCLG on the merits, but to carry out an audit of the legality of the decision making, and determine whether the SSHCLG has, as alleged by the Royal Mint Court Residents' Association (RMCRA) but denied by the SSHCLG, acted unlawfully in making the decision dated 20 January 2026.

212. As to ground one, set out in paragraphs 15 and 30 above, it is apparent from paragraphs 103 to 105 and 110 of the decision letter, set out in paragraphs 26 and 27 above, that the SSHCLG was well aware of the status of the PRC as an applicant, had well in mind the limitations of remedies under the Vienna Convention on Diplomatic Relations 1961 (the Vienna Convention), and it was not irrational to conclude that the PRC would comply with planning conditions and obligations. It was apparent that the SSHCLG expected the PRC to abide by the terms of any grant of planning permission, and specifically referenced the provisions of article 41 of the Vienna Convention, requiring those benefitting from diplomatic privileges and immunities to respect the laws and regulations of the receiving state, and identified possible actions if the PRC did not so comply. The SSHCLG noted that the PRC had participated constructively in the planning permission and listed building consent process. The SSHCLG was entitled to place weight on these facts which included, for example, PRC addressing the concerns raised by the

London Fire Brigade about inviolability, as set out in the letter of 20 August 2025 by the Foreign and Commonwealth Development Office and the Home Office referred to in paragraph 35 above. The concerns about compliance with planning laws raised by the facts giving rise to the decision in *Belfast City Council v Meifang* [2020] NICh 12 are part addressed in the judgment in that case, where it was apparent that discussions involving the council and the PRC, which the judge had described as fruitful, only broke down because the council had wrongly refused to accept that the Consul General, Madame Zhang Meifang, had immunity.

213. As to ground two, it is apparent from a careful examination of the relevant facts, as set out in paragraphs 64 to 138 of the judgment of Lieven J, that the Security Statement contained no substantive information which was not in the public domain, and that the relevant information from the Blast Assessment was contained in the Officers' Reports, so no issue of procedural unfairness could arise. Although Mr Henderson was able to point to some parts of the Blast Assessment that were expressed in different terms from other reports, the essential point was that the Metropolitan Police Service's Counter-Terrorist Security Adviser (CTSA) considered a terrorist attack at the relevant location opposite St Mary Graces Court to be unlikely. It is understandable that residents might not be as sanguine about the prospects of an attack as the CTSA, but that does not make the process leading up to the SSHCLG's decision procedurally unfair.

214. As to ground three, I agree with Lieven J that this ground is not arguable for the reasons set out in paragraphs 139 to 181 above. The rooms details which were redacted (or greyed out as they were referred to at the hearing) were being used for the purposes of the embassy, and there was no possible ambiguity as to the nature of the intended use of the premises. The SSHCLG was entitled to consider that no further information was required to be provided by the PRC.

215. As to ground five (which was the remaining and now fourth ground of challenge), it is apparent that the evidence does not show that there is a real risk of treatment infringing articles 10 and 11 of the Convention or article 1 of the First Protocol to the Convention. That is enough to dispose of the ground. It is, however, also apparent that all of the rights of residents protected by the Convention were properly addressed throughout the process of the application for planning permission. The RMCRA were, for example, entitled to raise, and did raise issues relating to protests and their safety in the event of the grant of planning permissions, and these issues were fully and fairly considered by the SSHCLG in making the lawful decision to grant planning permission.

216. The RMCRA's claims are therefore dismissed.