

**THE LONDON BOROUGH OF HARINGEY
(HIGH ROAD WEST PHASE A)
COMPULSORY PURCHASE ORDER 2023**

DOCUMENT CD 10.3

WITNESS 2: SELINA MASON, LENDLEASE

REBUTTAL

1. Introduction

- 1.1 My name is Selina Mason. Details of my qualifications and experience are set out in my main proof of evidence [CD 9.3].
- 1.2 In this rebuttal evidence (“**Rebuttal**”) I adopt the same references and abbreviations as I used in my first proof [CD 9.3] (my “**Main Proof**”).
- 1.3 This Rebuttal has been prepared to respond to the following evidence submitted in respect of the Order:
- (a) The proof of evidence (“**PoE**”) submitted by Alecos Tryfonos on behalf of the Tryfonos Objectors [CD 9.17].
 - (b) The PoE submitted by Colin Cottage of Ardent Management Limited on behalf of THFC in respect of viability matters [CD 9.23].
 - (c) The PoE submitted by Simon Ancliffe of Movement Strategies on behalf of THFC in respect of crowd flow matters [CD 9.25].
 - (d) The PoE submitted by Richard Serra as Property Director of THFC [CD 9.27].
- 1.4 Further rebuttal evidence in respect of the above proofs of evidence is provided by Peter O’Brien of the Council [CD 10.1], Tom Horne of DP9 [CD 10.5], James Franklin of CBRE [CD 10.6], Pascal Levine’s of DS2 [CD 10.8] and Becky Hayward of Buro Happold [CD 10.10].
- 1.5 This is not intended to be an exhaustive rebuttal of the contentions made in the evidence listed at paragraph 1.3 above. This document only deals with certain points where it is considered appropriate and helpful to respond in writing. Where specific points have not been dealt with, this does not mean that those points are accepted. They may be dealt with further at the Inquiry and/or in writing.
- 1.6 In preparing this Rebuttal, I confirm that the facts stated in this Rebuttal are either within my own knowledge or, where indicated, reflect the advice that I have received. The opinions I have expressed represent my true opinion.

Clarifications

- 1.7 In paragraph 2.6 of my Main Proof [CD 9.3] I incorrectly used ‘I’ at the opening of the paragraph. I should have used ‘Lendlease Limited’.

2. **Alecos Tryfonos Proof of Evidence**

2.1 This Rebuttal responds to the following matters raised within the PoE of Mr Tryfonos:

- (a) The importance of Chick King and K&M Store Household Goods to the Tryfonos Objectors, the local community and to Lendlease and the Council; and
- (b) The latest offer provided to the Tryfonos Objectors.

Importance of Chick King and K&M Store Household Goods.

2.2 Lendlease and the Council recognise the importance of Chick King and K&M Store Household Goods to the Scheme, to the local community and to the Tryfonos Objectors. It is for this reason that Lendlease and the Council have sought to facilitate the relocation of both businesses into the Scheme, as set out in the evidence of James Franklin [CD 9.9]. The latest offer to the Tryfonos Objectors is set out in full within the rebuttal evidence of James Franklin [CD 10.6] and summarised below.

2.3 As set out at paragraph 4.9 and in section 9 of my Main Proof, Lendlease has experience of successfully relocating local businesses into our urban regeneration projects, most notably at Artworks Elephant ("Artworks").

2.4 Artworks was a meanwhile use that provided an affordable commercial incubator space for the Elephant and Castle community: around 60 enterprises moved into Artworks during its five-year lifespan. Alongside the positive social and economic impact this had on the local area, it provided commercial success for Lendlease Limited as five of these businesses opted to take permanent spaces within Elephant Park when Artworks closed. This relocation was supported by business relocation support from Lendlease Limited as set out in **Appendix A [CD 10.4.1]**. Our track record at Elephant Park illustrates both our ability to support local businesses and our desire to do so.

2.5 We believe that supporting local businesses leads to better outcomes and places and want to relocate both Chick King and K&M Household Goods into the Scheme.

2.6 Lendlease and the Council acknowledge that the process will be disruptive, and business owners (including the Tryfonos Objectors) will require close support through the process. Lendlease Limited has experience of providing support to businesses as set out in **Appendix A [CD 10.4.1]** to ensure disruption is kept to a minimum and that relocation is a long-term success.

2.7 Lendlease and the Council have confirmed that the provisions of the Business Relocation Strategy (Schedule 11) of Section 106 Agreement [CD 4.29] are applicable to the Tryfonos Objectors in the Business Support Leaflet [CD 5.8]. This includes prioritising the relocation of their businesses into the Scheme, minimising operational disruption on their operations, local agent support to prepare potential relocation options based on their requirements and independent business relocation and advisory support. Lendlease has experience of providing similar types of support as set out in **Appendix A [CD 10.4.1]**.

Latest Offer made to the Tryfonos Objectors

- 2.8 The latest offer made to the Tryfonos Objectors is summarised below and in the rebuttal evidence of James Franklin [**CD 10.6**].
- 2.9 Two options in respect of the acquisition of the Tryfonos Objectors' properties have been made:
- (a) Acquisition of all of the Tryfonos Objectors' properties immediately with vacant possession to be provided on completion.
 - (b) Acquisition of the freehold and leasehold interests in all of the Tryfonos Objectors' properties immediately but with the Tryfonos Objectors continuing to occupy their properties on a rent-free basis until vacant possession is required. This option would facilitate the relocation of the Chick King and K&M Household Stores businesses into the Scheme.
- 2.10 Lendlease and the Council have offered a 'not before' date of Q2 2026.
- 2.11 Lendlease and the Council have offered to undertake measurements of all the Tryfonos Objectors' properties at Lendlease's cost to help inform valuations of the properties and offers. To date, we have not been provided with access to all the properties to undertake this exercise as such the values contained within the offers provided to date are based on the information currently available to Lendlease and the Council.
- 2.12 Lendlease and CBRE have consistently offered to meet with the Tryfonos Objectors to discuss queries and understand the Tryfonos Objectors' preferences in relation to relocation.
- 2.13 Lendlease and the Council have offered the Tryfonos Objectors specific locations for relocation units in Plot B and C2 for K&M Household Stores and in Plot C1 and C2 for Chick King [**CD 9.10.3** (page 101) **and 10.7.4**]. Plots B and C1 face onto Moselle Square. Plot C2 faces onto the High Road with active frontage to the Stadium.
- 2.14 The proposed units within Plots B and C1 would enable Chick King and K&M Household Stores to move directly from their existing premises into the new units based on the anticipated delivery programme.
- 2.15 The proposed units within Plot C2 would not enable Chick King or K&M Household Stores to move directly from their existing premises based on the anticipated delivery programme. Should Plot C2 be the Tryfonos Objectors' preference, Lendlease and the Council have offered to consider either of the following options during the period between the existing businesses ceasing to trade and re-opening in Plot C2:
- (a) Support for the Tryfonos Objectors to develop meanwhile or temporary options within the Scheme or nearby for their businesses.
 - (b) Financial compensation to the Tryfonos Objectors for lost or reduced profit during this period.

- 2.16 Lendlease and the Council have offered units of at least equivalent floorspace as the existing business units. Lendlease and the Council have confirmed that if the Tryfonos Objectors require larger units then this can be discussed.
- 2.17 Lendlease and the Council have offered the proposed units on the below lease terms as defined in the Section 106 Agreement [**CD 4.29**]:
- (a) a lease term of five to twenty years on a 'market rent' basis with upward-only rent reviews at the end of the fifth year of the term unless otherwise agreed by the parties;
 - (b) where an occupational lease is preferred, a reduced rent for the first five years or an incentive of potential equivalence;
 - (c) a fair and reasonable service charge. Lendlease have communicated that comparable schemes currently apply service charges of approximately £4.50 sq ft for retail properties to give the Tryfonos Objectors an indication of what service charge could be; and
 - (d) fit out of the units to a shell and core finish with a shopfront or equivalent frontage (where appropriate) or an alternative approach to fit out to be discussed between the parties.
- 2.18 In addition to the terms offered in paragraph 2.17, Lendlease and the Council have offered to consider:
- (a) leases to be inside Part 2 of the Landlord and Tenant Act 1954. This exceeds the obligation imposed on Lendlease required by the Section 106 Agreement [**CD 4.29**];
 - (b) a long leasehold of any term up to and including 250 years less the construction period for the relevant plot. This is the maximum lease length that Lendlease can offer under the terms of the DA; and
 - (c) leases subject to turnover based rents to address the Tryfonos Objectors concerns regarding the potential impact on the initial period of trading after relocation into the Scheme.
- 2.19 Lendlease and the Council have provided the Tryfonos Objectors with retail availability reports prepared by a local agent [**CD 9.10.1**] to provide an overview of potentially suitable retail premises within a three-mile radius of the Scheme should the Tryfonos Objectors wish to pursue alternative premises outside of the Scheme.
- 2.20 Lendlease and the Council have offered to reimburse the Tryfonos Objectors reasonable legal fees incurred in relation to the acquisition of their properties and relocation of their businesses within the Scheme.
- 2.21 The Council has confirmed that the equity loan option contained within the Love Lane Leaseholder Offer is available to the resident owner-occupiers of 755a High Road and 757a High Road (Kate, Kyriacos and Maria Tryfonos). See paragraphs 6.12.1, 6.12.2 and 6.19 of the evidence of Peter O'Brien [**CD 9.1**].

2.22 The Council has offered practical help in finding a new home on the open market as set out in the evidence of Peter O'Brien [**CD 9.1**].

3. **Colin Cottage's Proof of Evidence**

3.1 This Rebuttal responds to the following matters raised in Colin Cottage's PoE:

- (a) Comparisons made to the London Borough of Barking & Dagenham Council (Vicarage Field and surrounding land) Compulsory Purchase Order 2021 ("**Vicarage Field**").
- (b) The appropriate level of return for the Scheme.
- (c) The viability and termination mechanisms in the DA.

Comparison to the Vicarage Field CPO

3.2 At paragraphs 4.9 to 4.11 of his PoE, Mr Cottage sets out the basis of the Vicarage Field decision [CD 5.18] and appears to imply that comparison can be made between the viability position in the Vicarage Field CPO and the Order. This is inappropriate and misleading for the reasons set out below.

Viability Appraisal Results

- 3.3 In the case of Vicarage Field, the only viability information provided to the Inspector at the Inquiry held between April and July 2022 was a financial viability assessment dated September 2016 [CD 5.19] and an assessment of that appraisal dated December 2016 [CD 5.20] (together the "**Vicarage Field Viability Evidence**") produced in support of the planning application. The information provided to the Inspector was six years old at the date of the Vicarage Field Inquiry.
- 3.4 The Vicarage Field Viability Evidence illustrated that the project was "*substantially unviable*". The Vicarage Field Viability Evidence reported a negative 15.5% IRR and stated that, "*even if the developer takes no profit, the residual land value is £400,000, i.e. £41m below the existing use value, before the 20% premium is added*".
- 3.5 By comparison, the Financial Viability Assessment dated October 2021 carried out in respect of the Development [CD 4.6] and [CD 4.35] (the "**Planning FVA**") confirmed that the Development achieved a positive 11.62% IRR.
- 3.6 The appraisals illustrate that the Consented Scheme and the Development produce a positive return and provide a significant financial incentive to proceed as set out in the evidence of Pascal Levine [CD 9.12.1 and 9.12.2]. The Consented Scheme appraisal [CD 9.12.2] achieves:
- (a) a return of 11.59% IRR; and
 - (b) a gross development return of £169 million.
- 3.7 The viability positions for the Vicarage Field development and the Consented Scheme are therefore materially different.

Contractual Provisions

- 3.8 The terms of the agreement for lease between the London Borough of Barking and Dagenham and the developer, Lagmar (Barking) Limited (“**Lagmar**”), for the Vicarage Field scheme (the “**AfL**”) are substantially different to the terms of the DA. The AfL is included at **Appendix B [CD 10.4.2]**.
- 3.9 The AfL was conditional upon the "*General Conditions*" being satisfied. Lagmar was under a reasonable endeavours obligation to satisfy the "*General Conditions*" prior to the "*Longstop Date*".
- 3.10 This contrasts with the “all reasonable endeavours obligation” Lendlease is under within the DA to discharge the Phase Conditions¹. Lendlease is also under a separate “all reasonable endeavours obligation” to ensure that each Phase is “*Viable*” as defined by the DA **[CD 5.16]**.
- 3.11 In the case of Vicarage Field, one of the "*General Conditions*" was the "*Viability Condition*". The "*Viability Condition*" was that "*the Development is, in the reasonable opinion of the Developer or the Developer's Nominee (as appropriate) financially viable*". If the "*General Conditions*" were not satisfied by the "*Longstop Date*" then either party could terminate the AfL by serving notice on the other.
- 3.12 This is in stark contrast to the separate Pre- and Post- Viability Conditions within the DA. These are set out in further detail in paragraphs 3.26 to 3.38 below. In short, Lendlease must provide an Open Book appraisal for the "*Steering Group*" to determine whether the relevant Phase/Development is "*Viable*". If the "*Steering Group*" determines that the relevant Phase/Development is not "*Viable*", Lendlease must submit a "*Mitigation Plan*" to it for approval. If the "*Steering Group*" does not approve the "*Mitigation Plan*", it will be determined by an Expert. Lendlease is required to comply with the approved "*Mitigation Plan*". This is clearly a more rigorous process than required under the Vicarage Field AfL. In contrast to that case, under the DA it is the "*Steering Group*", not the development partner (Lendlease) who determines whether the viability conditions have been met for any given phase; and a determination that it has not leads to the requirement for a "*Mitigation Plan*" to be developed to enable performance of the DA to continue in accordance with its objectives.

Contracting Entities

- 3.13 Paragraph 119 of the Vicarage Field decision **[CD 5.18]** states that the development was to be delivered by Lagmar, which was a wholly owned vehicle of Pine Bridge Benson Elliott (“**PBBE**”). PBBE was formed by the acquisition of Benson Elliot (which had acquired the shares of Lagmar) by PineBridge Investments in December 2020. Paragraph 120 of the Vicarage Field decision then refers to PBBE's acquisition of Sigma Capital plc (a Build to Rent development company) in order to provide insight into new build rental market.
- 3.14 This was an investment strategy (for income) from an organisation which appeared to have limited development experience. Benson Elliot was an asset manager with a focus on investing in regeneration projects, rather than carrying out the development themselves.

¹ DA Clause 7.2.1

- 3.15 In the case of the Consented Scheme, there is no ambiguity or uncertainty around the experience or track record of Lendlease which has a demonstrably strong record of performance when it comes to the delivery of projects of similar (and indeed greater) complexity and scale.

The Appropriate Level of Return for the Scheme

- 3.16 Colin Cottage's PoE [CD 9.23] correctly identifies that the target return of the Planning FVA [CD 4.33 to 4.36] was a 13% IRR. The Planning FVA did not define a target return for the Consented Scheme.
- 3.17 The DA sets out a "Required Return" in relation to the Development but does not define a required return in relation to the Consented Scheme.
- 3.18 As set out in section 7 of my Main Proof [CD 9.3], the Scheme has a lower proportion of risks when compared to the Regeneration Scheme. This means that a lower projected return can be justified.
- 3.19 One such risk is the certainty on funding. When considering the agreed affordable housing purchase prices and the grant funding, there is approximately £190 million of secured funding for the Scheme. This represents 94.4% of the construction costs for all the affordable housing within the Scheme (Plots A, B and C1) as identified in Pascal Levine's evidence [CD 9.12.2]. The affordable housing comprises 576 (38.7%) of the 1,488 homes within the Consented Scheme.
- 3.20 This decreases the risk associated with the Scheme when compared to the Regeneration Scheme such that it can be justified with lower projected returns than would otherwise be sought.
- 3.21 As I set out in section 7 of my Main Proof [CD 9.3] the projected return for the Scheme is in line with the typical risk adjusted returns that Lendlease would expect from an urban regeneration project such as the Scheme.
- 3.22 Such conclusion is supported by the evidence of Pascal Levine [CD 9.11] and the Council's independent review of the Appraisals [CD 9.2] which concluded, respectively, that
- a) *"the financial returns of the Development and the Consented Scheme provide a strong financial incentive to proceed".*
 - b) *"the outturn IRRs for both the Consented Scheme and the Development are within the range developers would normally expect to achieve for a scheme of this scale and complexity".*
- 3.23 Lendlease considers that the projected financial return of the Scheme is in line with the appropriate risk-adjusted return to be expected from the Scheme.

The Viability and Termination Mechanisms of the DA

- 3.24 In section 5 of his PoE, Mr Cottage refers to the viability and termination DA provisions and seeks to create doubt that Lendlease will continue with delivery of the Scheme where any given phase of the Scheme is unviable.
- 3.25 Below I set out how viability of the Regeneration Scheme, the Scheme and each of its component phases is addressed in the DA and why this creates certainty that Lendlease will deliver the Scheme in full.

Phase Conditions and Subsequent Phase Conditions

- 3.26 The drawdown of a long-term lease of each phase is conditional on satisfaction of a number of conditions set out in the DA ("*Phase 1 Conditions*" and "*Subsequent Phase Conditions*"). Lendlease is under an all reasonable endeavours obligation to satisfy those conditions as set out at paragraph 3.10 above.
- 3.27 The conditions for "*Subsequent Phases*" (which excludes Phase 1) include the "*Pre Planning Viability Condition*" and the "*Post Planning Viability Condition*" where the relevant phase contains "*Private Sale Homes*". Phase 1 is not conditional on viability.
- 3.28 These conditions require the financial appraisal for the relevant "*Phase*" and the "*Development*" to demonstrate that the "*Phase*" and "*Development*" is "*Viable*" (i.e. achieves the "*Required Return*" as defined by the DA).

Pre-Planning Viability Condition

- 3.29 Prior to submission of a detailed planning application for a "*Phase*" containing "*Private Sale Homes*", Lendlease must provide a financial appraisal to the "*Steering Group*". The "*Steering Group*" comprises an equal number of members from Lendlease and the Council.
- 3.30 The appraisal will be provided on an open book basis with full details of workings and evidence. The "*Steering Group*" will determine whether the financial appraisal demonstrates that the "*Phase*" and the "*Development*" is "*Viable*".
- 3.31 Lendlease must use "all reasonable endeavours" to ensure that the "*Phase*" is "*Viable*"².
- 3.32 If the Steering Group determines that a "*Phase*" is not "*Viable*" then Lendlease must submit a "*Mitigation Plan*" for approval by the "*Steering Group*". The purpose of the "*Mitigation Plan*" is to set out alternative proposals for the "*Phase*" which will seek to achieve "*Viability*" for that "*Phase*".
- 3.33 A non-exhaustive list of nine potential Mitigation Plan components is set out within the DA³. These include reducing the level of Lendlease's return, carrying forward "*Phase*" deficits and waiving "*Phase 1 Conditions*" and "*Subsequent Phase Conditions*", subject to the "*Council Facilities*" and the "*Core Requirements*" (which include the provision of 546 social rent homes

² DA clause 8.2.1

³ DA definition of Mitigation Plan

and the Library and Learning Centre) still being delivered. I explain the importance of these "*Mitigation Plan*" components in paragraph 3.46 below.

- 3.34 If the "*Steering Group*" does not approve the "*Mitigation Plan*", then the "*Mitigation Plan*" will be determined by an "*Expert*"⁴.
- 3.35 Once agreed or determined, Lendlease will comply with the "*Mitigation Plan*" as part of its obligations to comply with DA and delivery of the Development⁵.
- 3.36 Lendlease and the Council are to act in good faith and use reasonable endeavours to overcome or minimise the consequences of the condition not being satisfied⁶.

Post Planning Viability Condition

- 3.37 Following satisfaction of all other subsequent "*Phase Conditions*" in respect of a "*Phase*" that will contain "*Private Sale Homes*", Lendlease must provide a financial appraisal to the "*Steering Group*" and the "*Steering Group*" must determine whether the financial appraisal demonstrates that the "*Phase*" and "*Development*" is "*Viable*". The appraisal is provided on an open book basis with full details of workings and evidence. The "*Steering Group*" determines whether this condition is satisfied.
- 3.38 If the "*Steering Group*" determines that a "*Phase*" is not "*Viable*", the same procedure as set out paragraphs 3.32 to 3.36 above is followed.

Termination

- 3.39 If the conditions for a "*Phase*" are not satisfied by the relevant longstop dates then the Council may determine the DA in relation to that "*Phase*"⁷. The DA will determine in respect of that "*Phase*" 20 working days after notice unless the conditions are satisfied within that 20 working day period.
- 3.40 If the Council's considers that Lendlease is not using all reasonable endeavours then the Council may seek to terminate the DA for material breach⁸. Lendlease has a period to remedy the breach. If it is not remedied then the Council has a right to terminate the DA.

The DA Viability Mechanisms in relation to the Scheme

- 3.41 The "*Pre-Planning Viability Condition*" and the "*Post-Planning Viability Condition*" are not applicable to Phase 1 and are only applicable to "*Subsequent Phases*" which contain "*Private Sale Homes*".
- 3.42 As set out in section 8 of my Main Proof, the initial phases of the Scheme (Plots A, B and C1) are envisaged to be 100% affordable housing. As such, the first Phase that that will trigger

⁴ DA Clause 34.2

⁵ DA Clause 34.3

⁶ DA Clause 34.4

⁷ DA clause 37.3.1

⁸ DA clause 38.1.1

the Pre- or Post- Planning Viability Conditions is Phase 4 (Plot C2) which is due to commence in 2027.

- 3.43 Mr Cottage states in section 5 of his PoE that Lendlease may not be willing to agree a reduced level of return of a Phase if it considered that it would also not be able to achieve its target return for subsequent Phases.
- 3.44 When considered as a whole, for the reasons set out in paragraphs 3.16 to 3.23 above, the projected financial return of the Scheme and the Regeneration Scheme is considered to be in line with the appropriate risk-adjusted return to be expected from comparable projects such that there is a significant financial incentive to proceed with subsequent phases.
- 3.45 This is notwithstanding the significant investment Lendlease has made into the Scheme and the Regeneration Scheme to date as set out in section 6 of my Main Proof and that the Council's independent review [CD 9.2.1] identified opportunities to improve the viability of the Consented Scheme.
- 3.46 Turning to the viability for any given Phase; it was not (and has never been) assumed that all Phases within the Scheme would be independently financially viable.
- a) It is widely understood that affordable housing, particularly social rented housing, is not independently financially viable and requires a cross subsidy approach for it to be viably delivered as part of a wider masterplan.
 - b) It was envisaged that the Phases containing affordable housing and non-revenue generating assets such as the Library and Learning Centre may not be able to satisfy the "*Pre-Planning Viability Condition*" in isolation. This is an example of why the Mitigation Plan includes the potential for waiving "*Phase Conditions*" or carrying forward phase deficits.
- 3.47 This principle of cross subsidy is why the whole of the Order Land is required to deliver the Scheme. Later Phases of the Scheme are required to provide a cross subsidy approach to lesser and non-revenue generating Phases. This principle of cross subsidy was contemplated at the outset of Lendlease's involvement in the Development as illustrated by schedule 12 of the DA.
- 3.48 The relevant longstop dates for the "*Phase 1A Conditions*" and "*Site Wide Conditions*" are included in schedule 7 of the DA [CD 5.16] and are capable of being met under the current delivery programme, as set out in section 8 of my Main Proof [CD 9.13].
- 3.49 As later Phases of the Scheme will provide a cross subsidy approach to lesser and non-revenue generating phases, there is a strong incentive for Lendlease to deliver later phases of the Scheme.

4. Simon Ancliffe's Proof of Evidence

4.1 This Rebuttal responds to the following matters raised in Simon Ancliffe's PoE:

- (a) The importance of crowd flow and Lendlease's commitment to ensuring crowd flow is dealt with appropriately.
- (b) The access licence to be entered into with THFC.
- (c) The suitability of the crowd flow controls included for in the Planning Permission.

Importance of Crowd Flow

4.2 As set out section 10 of my Main Proof [CD 9.3] and in paragraphs 5.2 to 5.6 below, there has been extensive engagement between Lendlease and THFC since 2017. As part of this engagement, we have understood and agree on the importance of the safe movement of crowds across the Scheme during the construction and operational phases of the Development.

4.3 Indeed, such a requirement was clear and understood by both Lendlease and the Council at the outset of entering the DA which included at Core Requirement (vi): "*improvements to the landscape and public realm including a major new link between an enhanced White Hart Lane Station and THFC*"; (my emphasis).

4.4 This recognition of the importance of crowd flow matters contributed toward the preparation and submission of a planning application for the Development. This design incorporated substantive public realm with direct access between Station and the Stadium to facilitate the movement of crowds.

4.5 In section 6 of Mr Ancliffe's PoE, he states that unless additional work is undertaken, it has not been demonstrated that the end state of the Scheme will provide satisfactory arrangements for the safe movement and management of crowds.

4.6 I deal with Lendlease obligations to provide additional crowd flow information in paragraphs 4.14 to 4.19 below.

4.7 Is it notable that Mr Ancliffe does not state that the end state of the Scheme cannot provide satisfactory arrangements for the safe movement and management of crowds, nor does he comment whether the end state of the Scheme offers an improvement from the existing condition.

4.8 The design of the Consented Scheme, which remains unchanged since the submission of the planning application, was independently assessed by the Council's crowd flow expert to offer an improved situation for stadium crowds' post-construction. This is set out in the evidence of Becky Hayward [CD 9.13] and by planning officers at paragraph 6.38 of the Officer's Report [CD 4.9]:

"6.38 The submitted parameters and illustrative masterplan can accommodate the spatial requirements required to enable the successful management of crowd flows on event days. The proposed indicative layout would improve the existing queue management, circulation and way finding on event days by having a design purpose built to accommodate crowd flow."

improving legibility to the stadium, increasing areas available for queuing and reducing pinch points in the approach to the stadium.” (my emphasis).

- 4.9 Such assessments and sustained engagement illustrate that Lendlease has properly understood the importance of crowd flow measures from the outset and has designed the Scheme to accommodate the safe movement of crowds in a manner that offers an improvement to the existing condition.

Access Licence

- 4.10 In his PoE Mr Ancliffe draws attention to what ‘might’ happen in the event that ‘suitable’ rights of access are not granted to THFC across the Scheme on event days. Such a theoretical possibility ignores the commercial incentives and obligations on Lendlease to enter into the Access Licence.
- 4.11 The Section 106 Agreement [CD 4.29] contains an “all reasonable endeavours” obligation on Lendlease to enter into the Access Licence or Temporary Access Licence (schedule 13, paragraph 7.2):

“7.2 The Developer will use all reasonable endeavours as from the date of this Agreement to enter into the Access Licence or Temporary Access Licence (as the case may be) with THFC to be in place from the date it first acquires a legal interest in the Access Land by:

- (a) offering THFC the opportunity to meet twice every month for a period of at least six months prior to the commencement of Plot D;*
- (b) negotiating an Access Licence on the Licence Specified Terms (and for the avoidance of doubt the Developer may, but shall not be required to, agree to Any access terms beyond those in the Licence Specified Terms)”* (my emphasis).

- 4.12 Lendlease also has a significant commercial incentive to agree the terms of the Access Licence to enable it to continue with its core business activity of development: see paragraph 42 of the judgment of Mr Justice Saini [CD 5.17].
- 4.13 The latest engagement between Lendlease and THFC on the Access Licence is set out at paragraphs 5.7 to 5.9 below in response to the evidence of Mr Serra.

Crowd Flow Controls

- 4.14 In section 7 of his PoE, Mr Ancliffe states that it is not possible to conclude that THFC will be able to meet its Zone Ex obligations or that the safe management of movement of crowds can be accommodated during the construction period based on information available to him now.
- 4.15 It is notable that Mr Ancliffe does not seem to state that the safe management of crowds cannot be accommodated within the parameters of the Planning Permission.

- 4.16 The PoE of Becky Hayward [CD 9.13] provides evidence of how the movement of crowds can be accommodated through the construction phases of the Scheme within the parameters of the Planning Permission.
- 4.17 Whilst the detailed layout of the site and interim crowd management strategy is not available now, the Planning Permission places obligations onto Lendlease to provide further crowd flow information, as set out in Tom Horne's evidence [CD 9.5]. This ensures that information will be prepared and scrutinised by the relevant stakeholders, including THFC, prior to commencement of any Phase of the Scheme (excluding Plot A).
- 4.18 The suitability and legal integrity of those conditions has been verified by the judgment of Mr Justice Saini [CD 5.17]. Mr Justice Saini notes at paragraphs 49 and 50 of his judgment that THFC has not provided any evidential basis to illustrate that there would be unreasonable impacts on THFC and that the Planning Permission created a framework which would ensure access to the stadium would be satisfactorily achieved.
- 4.19 In summary, the controls imposed on the Planning Permission provide the effective framework within which the safe management of movement of crowds can be successfully accommodated during the construction period and the evidence of Becky Hayward [CD 9.13] confirms how this can be achieved alongside the current delivery timetable and phasing of the Scheme.

5. **Richard Serra's Proof of Evidence**

5.1 This Rebuttal responds to the following matters raised in Richard Serra's PoE:

- (a) Engagement between Lendlease and THFC including on crowd flow matters.
- (b) Access Licence Correspondence between Lendlease and THFC.

Engagement between Lendlease and THFC

5.2 In section 6 of his PoE, Mr Serra sets out what THFC considers to have been 'substantive engagement' between Lendlease and THFC since 2017. Mr Serra references only a fraction of the engagement between Lendlease and THFC as set out below and his view of what is substantive is, in my opinion, incorrect.

5.3 Lendlease has long sought to engage with THFC to deliver comprehensive regeneration of the Development. As set out in section 10 of my Main Proof [**CD 9.3**], Lendlease has held approximately 60 meetings with THFC since 2017. In addition to stakeholder specific meetings, THFC were invited to, and attended some, community consultation and engagement events undertaken as part of the planning application process, as set out in the Statement of Community Involvement [**CD 4.7**]. This consultation continued after the submission of the planning application as detailed in the Addendum to the Statement of Community Involvement [**CD 4.8**].

5.4 Lendlease has specifically engaged with THFC on matters of crowd flow. A detailed log of specific crowd flow engagement with between Lendlease, THFC and their respective crowd flow consultants is set out in the appendixes of Becky Hayward [**CD 9.14.1**].

5.5 As set out in sections 2 and 4 of my Main Proof [**CD 9.3**], the establishment of a strong relationship with local stakeholders and understanding of the existing context is essential to delivering the best outcomes for regeneration and value creation. Lendlease has long sought, and will continue to seek, engagement with THFC for this reason.

5.6 Engagement with THFC continues today, including on matters such as crowd flow and the Access Licence as set out below.

Access Licence Correspondence

5.7 As set out in section 10 of my Main Proof [**CD 9.3**], Lendlease is willing to enter into the Access Licence with THFC on reasonable terms.

5.8 Lendlease has taken a pragmatic approach to the Licence Specified Terms which reflect its desire to work co-operatively with THFC during both the construction and operational phases of the Development.

5.9 The latest letter between Lendlease and THFC in relation to the Access Licence terms is attached at **Appendix C** [**CD 10.4.3**].

Selina Mason

31 October 2023

Appendix A [CD 10.4.1]

Tasty Jerk Business Support Case Study – October 2023

Appendix B [CD 10.4.2]

The agreement for lease between the London Borough of Barking and Dagenham and the developer, Lagmar (Barking) Limited, for the Vicarage Field CPO

Appendix C [CD 10.4.3]

Letter from Lendlease to THFC in relation to the Access Licence 'Licence Specified Terms'