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

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REBUTTAL PROOF OF COLIN COTTAGE BSc.(Hons) MRICS

SCHEME VIABILITY

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1 INTRODUCTION

1.1 This rebuttal report is primarily a response to the proof of evidence prepared by Mr Pascal Levine MRICS **(CD 9.11)**, but also makes reference to the proof of evidence submitted by Selina Mason **(CD 9.3)**.

1.2 Mr Levine's evidence for the first time provides an explanation of how viability will be assessed for the CPO Scheme when addressing the Viability Conditions within the Development Agreement. This differs from the approach taken in relation to the Regeneration Scheme's viability for the purpose of determining the amount of affordable housing that scheme could provide. I note that the Council and Lendlease have agreed that affordable housing viability will be reviewed throughout the course of development **(see CD 4.36)** and have assumed that the Council is comfortable with the different approaches that will be taken to assessing affordable housing viability and viability for the purpose of the Development Agreement.

1.3 Selina Mason's evidence for the first time explains Lendlease's revised development delivery strategy for the CPO Scheme and its proposed response to the current challenges facing the development sector.

1.4 Because my original proof of evidence was drafted without the benefit of the information that has now been provide by Mr Levine and Ms Mason, some of the questions I raised have now been answered, are no longer relevant, or have reduced relevance. I nonetheless still consider that there are concerns over the viability of the CPO Scheme, particularly when considered within the context of the Development Agreement.

1.4 Where any point raised in Mr Levine's or Selina Mason's evidence is not directly addressed in this rebuttal, this should not be taken to be an acceptance of that point.

1.5 Any abbreviations used in this rebuttal correspond with those used in my original proof of evidence.

Scope of Mr Levine's Evidence

1.6 At paragraph 1.14 of his proof, Mr Levine confirms he prepared the FVA. I therefore assume the FVA's conclusion as to the Regeneration Schemes viability (at least in terms of its ability to provide affordable housing) represented his view at that time.

'*DS2 has undertaken an assessment of the Proposed Development which includes the site value for HRW as a fixed land cost. The appraisal demonstrates an outturn IRR of circa 6.6%. This is below the expectation of the level of profit the market would seek, being circa 14%. This demonstrates the Proposed Development is currently not viable with the anticipated planning and affordable housing liabilities.*'[1]

1.7 While the FVA also said:

'*The results of the sensitivity testing demonstrate that through a combination of changes to the sales and build cost inputs in the viability of the Proposed Development, an improvement in the Residual Profit can be achieved.*'[2]

I note that it fell short of confirming that the Regeneration Scheme could be made viable in terms of achieving an IRR of 14% or more.

1.8 At paragraph 1.28 of his proof, Mr Levine says he has considered the viability of both the Regeneration Scheme and the CPO Scheme in the context of the Pre and Post Planning Viability Conditions in the Development Agreement. However, at paragraph 1.26, Mr Levine also confirms he is unaware of the Required Return, despite accepting it is a defined term that represents the measure of viability specified within the Development Agreement. Mr Levene does not explain how he has been able to reach any firm conclusions over the CPO Scheme's viability within the context of the Development Agreement without knowing what the Required Return is.

[1] See paragraph 1.11.1.6 of the FVA
[2] See paragraph 1.11.1.7 of the FVA

2 The Financial Viability Appraisal (FVA)

2.1 At paragraph 2.5 of his proof, Mr Levine confirms the agreed inputs to the FVA were as set out in DS2's letter of 13 July 2022 **(CD 4.36)**. He also confirms at paragraph 2.8 that:

- *'An IRR of 13 percent was agreed as the target developer return;*
- *The financial appraisal concluded a present-day IRR of 11.62 percent demonstrating that the affordable housing offer was in excess of the maximum viable amount.'*

2.2 At paragraphs 2.9 and 2.10 Mr Levine explains that Lendlease nonetheless decided that the 1.38% difference between the agreed target IRR return, and the residual return was reasonable and:

'*manageable from a risk perspective given a range of factors including the propensity for market growth over the long term.'*

2.3 Mr Levine says at paragraph 2.11 of his proof that determining viability for planning purposes (i.e agreeing affordable housing numbers and planning contributions) is different from determining viability for the purpose of considering whether scheme viability might be an impediment that should impact on a decision whether to confirm compulsory purchase powers. I agree with this premise, but not to the extent that the FVA can be entirely ignored as a measure of viability.

2.4 While the measure against which viability is determined might be different (in this case planning viability was measured against the target return agreed between DS2 and BNP, while the CPO Scheme viability should be assessed against the, unconfirmed, Required Return within the Development Agreement) in most respects the inputs into the viability appraisals will be the same.

2.5 Two potential exceptions are confirmed at paragraph 3.8 of Mr Levine's proof where he notes that the approach to the assessment of site acquisition costs (BLV) might be different, and that inflation and potential sales value growth might also be taken into account for the purpose of a 'market facing' viability appraisal, while they would not normally be for a planning viability appraisal.

2.6 Although Mr Levine says that he would expect land acquisition costs for a CPO viability appraisal to be greater than the BLV for a planning viability appraisal, the FVA did not adopt a normal Planning appraisal EUV+ approach, but instead assessed the BLV on market value basis and also made allowances for compensation. This is effectively the same approach that should be taken with a CPO viability appraisal.[3] The only reason for any material increase in assumed land acquisition costs is therefore because the BLV was understated in the FVA. Something I warned of in my proof of evidence.[4]

2.7 Mr Levine confirms the site acquisition costs for his CPO Scheme Appraisal are based on a Property Cost Estimate (PCE) agreed between the Council and Lendlease.[5] I assume that this has been prepared by CBRE and reflects the estimated cost of acquiring all of the property interests required for the CPO Scheme using compulsory purchase powers.

2.8 If the BLV had been calculated at the level now adopted for Mr Levine's CPO Scheme Appraisal, the IRR calculated and agreed for the FVA would have been lower.

[3] See paragraph 6.39 of my proof of evidence
[4] See paragraphs 6.46 – 6.48 of my proof of evidence
[5] See paragraph 3.33 of Mr Levine's proof of evidence

3 THE DEVELOPMENT AGREEMENT

The Relevance of the Development Agreement

3.1 At paragraph 1.23 of his proof, Mr Levine confirms that the Regeneration Scheme (and presumably the CPO Scheme) is to be delivered pursuant to the terms of the Development Agreement. He therefore appears to accept that the viability of the CPO Scheme needs to be considered within the context of that agreement in terms of how and when it requires viability to be measured.

3.2 Consistent with the explanation of the Development Agreement Viability Conditions set out at section 5 of my proof of evidence, Selina Mason confirms at paragraph 5.12(f) of her proof that:

'*The Pre-Planning Viability Condition, where applicable, requires Lendlease to demonstrate that the relevant phase and overall Regeneration Scheme*[6] *are viable before submission of reserved matters for that stage.*'

'The Post-Planning Viability Condition requires Lendlease to demonstrate the viability of the relevant phase and the overall Regeneration Scheme[7] *following grant of reserved matters for that stage*.'

3.3 Therefore, every individual phase (other than Phase 1) of the CPO Scheme, that includes market housing as well as the CPO Scheme as a whole, will have to be demonstrably viable under the terms of the Development Agreement Viability Conditions when they are actioned.

Release of the Latest Version of the Development Agreement

3.4 On 11 October 2023, the Council released a version of the Development Agreement where a number of previously redacted sections of that agreement were no longer redacted. However, in relation to the Development Agreement's Viability Conditions, little new was revealed in terms of explaining how they are expected to operate and interact with the Development Agreement's termination provisions.

3.5 Crucially, the Required Return remained redacted.

[6] As The Regeneration Scheme is currently undeliverable, whether or not the CPO is confirmed, I assume that it is, in fact, the CPO Scheme which will need to be viable

[7] Again, I assume that it is the CPO Scheme that will need to demonstrate its viability

3.6 Moreover, as I noted at paragraph 5.25 of my proof, it is not currently possible to determine the Phase Condition Longstop Date and/or Phase Condition Drop Dead Date by which the Pre and Post Planning Viability Conditions would need to be satisfied before the Development Agreement could be terminated in relation to any particular phase. While the recently released version of the Development Agreement now confirms that the Phase Condition Longstop Date is defined as:

'*The later of: 1 December 2025; and 38 months from and including the date of satisfaction of the Strategy Condition.*'

Selina Mason and Peter O' Brien both confirm that the Strategy Condition (as one of the Site Wide Conditions) has been satisfied,[8] they do not say on what date they were satisfied.

3.7 The Phase Condition Drop Dead Date (for Subsequent Phases after Phase 1 is defined as:

'*..the relevant date contained in the Development and Phasing Programme.'*

However, the Development and Phasing Programme has not been made available.

3.8 Therefore, while after either of the Phase Condition Longstop Date, or the Phase Condition Drop Dead Date, the Development Agreement's termination clause provisions can potentially be actioned if the Viability Conditions were not met, it is still not possible to confirm when those dates are.

3.9 **When the Development Agreement Viability Conditions will First Apply**

Selina Mason confirms at paragraph 5.12(f) of her proof that the Development Agreement Viability Conditions only apply to phases which include market homes, other than for Phase 1, which includes Plots A and D. While she also says that the initial phases of the CPO Scheme are envisaged to be affordable housing Plot D in fact provides 380 market sale units (41.6% of the total provided by the CPO Scheme), despite not being captured by the Development Agreement Viability Conditions.

[8] Paragraph 5.8 of Selina Mason's proof of evidence and paragraph 10.10 of perter O' Brien's proof of evidence

3.10 As Phases 2 and 3 of the revised CPO phasing plan provide only affordable homes, they are also not subject to the Development Agreement Viability Conditions. Selina Mason therefore confirms that the Viability Conditions will first have to be satisfied for Phase 4 of the CPO Development, which comprises Block C2, due be commenced in Q1 2027.

3.11 The Pre-Planning Viability Conditions will however need to be satisfied prior to satisfaction of the Subsequent Phase Conditions for Phase 4 and in advance of submission of reserved matters. Therefore, it is likely that the Pre-Planning Viability Condition for Block C2 will need to be satisfied prior to Q1 2027 in order for development to commence at that date, presumably at some point in 2026. Block C2 will need to achieve the Development Agreement Required Return by this date to avoid it becoming a Mitigation Matter, requiring implementation of a Mitigation Plan.

Mitigation Plan Options

3.12 Selina Mason indicates that the Development provides for variations in the Regeneration (and presumably CPO) Scheme's performance during the course of its delivery.[9] However, I note in my proof that it is not clear how any of the example Mitigation Plan solutions proposed in the Development Agreement would be likely to overcome the problem that a significant lack of viability would present.[10] Indeed, Lendlease already appears to have put in place what mitigation actions it can to deal with the viability issues currently facing the CPO Scheme by bringing forward the development of affordable housing and pushing back the development of market sale housing in the way explained by Mr Levine and Selina Mason in their proofs.

3.13 Selina Mason does however also confirm at paragraph 5.12(f) of her proof that one other option would be for Lendlease to reduce the level of return it would accept. This suggests that a failure to meet the Required Return set out in the Development Agreement is a recognised possibility. However, the ability to accept a reduced level of return is not a commitment to accepting that return and Selina Mason proposes no other possible mitigation measure.

[9] See paragraph5.12(f) of Selina Mason's proof of evidence
[10] See paragraph 5.26 of my proof of evidence

4 VIABILITY ASSESSMENT METHODOLOGY & INPUTS

Mr Levine's Approach and Methodology

4.1 Mr Levine provides viability appraisals for both the Regeneration Scheme **(CD 9.12.1)** and the CPO Scheme **(CD 9.12.2)** as appendices to his proof of evidence. However, only an assessment of the viability of the CPO Scheme is relevant in the context of paragraph 106 of the CPO Guidance and[11] I have therefore only considered that appraisal (the '**CPO Scheme Appraisal**') in detail.

4.2 Moreover, while Mr Levine considers the viability of the CPO Scheme as a whole, he does not consider whether individual phases of the CPO Scheme are viable, which is an important part of the test that will need to be met to satisfy the Viability Conditions in the Development Agreement. Even if it could be demonstrated that the CPO Scheme might be viable overall, the Development Agreement Viability Conditions would not be satisfied if an individual phase were found to be unviable.

4.3 At paragraph 3.4 of his proof, Mr Levine confirms that he has taken a 'market-facing' approach, and his viability appraisals incorporate growth on revenues and inflation on 'major costs' to assess potential viability. I note Mr Levine's use of the word 'potential', and while I understand why he has adopted the approach he has (and I have no in principle objection to it), it clearly imports an element of risk into the appraisal exercise; particularly in circumstances where a development (in this case the CPO Scheme) is significantly unviable at the date of the appraisal, and projections of its future viability are heavily dependent of on estimated growth and inflation rates over a relatively long period into the future.

4.4 The validity of Mr Levine's approach, and the degree to which it imports risk, also obviously depends on the growth and inflation metrics assumed. The more ambitious the assumed revenue growth and/or the more optimistic the assumed rate of cost increase, the greater the risk that the results of the viability appraisal will be unreliable.

4.5 I set out my opinion on these matters and other elements of Mr Levine's CPO Scheme Appraisal below.

[11] See paragraph 7.1 of my proof of evidence

The Illustrative Scheme

4.6 Mr Levine says at paragraph 3.9 of his proof that the CPO Scheme Appraisal reflects the Illustrative Scheme that accompanied the Regeneration Scheme Planning Permission. However, I have noted a number of variations between the Illustrative Scheme development assumed for the FVA and the development assumed for the CPO Scheme Appraisal.

i) For the FVA, Plot A was said to have a NIA of 23,056 sq.ft for 31 units, while for the CPO Scheme Appraisal it is said to have a NIA of only 22,292 sq.ft, despite there being an additional unit. Plot A's GIA has also reduced from 62,935 sq.ft to 61,929 sq.ft.

ii) For the FVA, Plot B was said to comprise 190 residential units for market sale and 141 units for social rent (331 units in total). For the CPO Scheme Appraisal 276 social rent and 74 shared ownership units are assumed (350 units in total). The NIA of the residential units at Plot B has been increased from 246,762 sq.ft to 252,026 sq.ft. and the GIA has increased from 329,423 sq.ft to 334,557 sq.ft.

iii) For the FVA, Plot C was said to comprise 11 market sale units and 168 social rent units (179 units in total). For the CPO Scheme Appraisal 165 social rent units are assumed and the NIA of the residential units at Plot C has reduced from 139,371 sq.ft to 135,195 sq.ft. Block C retail accommodation has been reduced from a NIA of 1,701 sq.ft. to a NIA of 998 sq.ft., while the NIA of sporting facilities has increased from 3,165 sq.ft. to 3,866 sq.ft. The total GIA of Plot C has reduced from 191,948 sq.ft. to 183,996 sq.ft.

iv) Plot D residential accommodation numbers and sizes remain unchanged, but while for the FVA Plot D was to provide retail space with a NIA of 5,834 sq.ft., for the CPO Scheme Appraisal it provides both retail and sporting accommodation with NIAs of 3,850 sq.ft. and 1,981 sq,ft respectively. The overall GIA of Plot D remains unchanged at 334,557 sq.ft.

v) For the FVA, Plot F was said to comprise 280 market sale units, 91 social rent units and 74 shared ownership units (445 units in total). For the CPO Scheme Appraisal 450 market sale units are assumed. Despite the increased number of units, the NIA of the residential element at Plot F has been reduced from 304,931 sq.ft to 303,914 sq.ft. In terms of non-residential accommodation, the amount of office space provided by Plot F remains unchanged at 547 sq.ft, but the amount of retail space has been reduced from an NIA of 7,288 sq.ft to 4,912 sq.ft,, while sporting facilities have increased from a NIA of 3,169 sq.ft. to 5,546 sq.ft. The GIA of Plot F has been reduced from 420,520 sq.ft. to 413,712 sq.ft.

vi) For the FVA, Plot G was said to provide 40 social rent units, while for the CPO Scheme Appraisal 30 market sale units are assumed. Despite the reduced number of units, the NIA of the residential element of Block G has increased from 26,092 sq.ft to 26,156 sq.ft., while the GIA remains unchanged at 38,100 sq,ft. The amount of retail space provided by Block G also remains effectively unchanged.

4.7 Overall the NIA of that part of the Illustrative Scheme comprising the CPO Scheme was taken to be 1,105,268 sq.ft for the purpose of the FVA, while for the CPO Scheme Appraisal a total NIA of 1,103,882 sq.ft has been adopted. With respect to GIA the FVA adopted 1,468,002 sq.ft, while for the CPO Scheme Appraisal there is a total GIA of 1,454,409 sq.ft. This means that the ratio of the gross and net floor areas assumed for the Illustrative Scheme has increased slightly from, 75.29% for the FVA, to 75.90% for the CPO Scheme Appraisal. i.e. there is a slightly greater proportion of saleable area from which revenue will be generated in comparison to the gross area of the development against which costs should be assessed.

4.8 Given recent and proposed changes to residential development requirements since the Illustrative Scheme was devised, including the need to provide a second stair core for all buildings over 18 metres, this is counter to what I would have expected. Even if the gross area of the Illustrative Scheme remained unchanged, it is my experience that construction of second stair core would reduce the development's net saleable area. At paragraph 5.12 of his proof, Mr Levine confirms that this is also his experience.

The Developer Return

4.9 As indicated in my proof of evidence, I have no issue with the use of IRR as a measure of return for a development such as the CPO Scheme. However, the extent to which there is risk around delivery of a development will dictate a developer's choice of target IRR, and the greater the level of risk, the higher the IRR that will be required. At section 1.10 of the FVA, DS2 explained why a complex regeneration project such as the CPO Scheme would justify a higher target IRR than a more straight forward development.

4.10 In this case Lendlease has not revealed the Required Return it is seeking to achieve from the CPO Scheme. However, for the reasons I explain in my proof of evidence,[12] it is likely that a developer deciding at the current time whether or not to undertake the CPO Scheme would seek a greater IRR than at both the Development Agreement was signed in 2017 and the date the FVA was undertaken.

The Phasing of the Development/Delivery Timetable

4.11 At paragraph 3.17 of his proof, Mr Levine notes that an updated phasing plan for the Regeneration Scheme (including the CPO Scheme) was approved by the Council in September 2023.

4.12 This revised phasing plan appears to be consistent with both the development timetable set out at para 7.42 of the CPO Statement of Case and the phasing strategy at paragraph 8.4 of Selina Mason's proof.

Phase	**Plot**	**Development**	**Start**	**Completion**
Phase 1A	Plot A	Social Rent	Q4 2023	Q3 2025
Phase 1B	Plot D	Market Sale/Retail/Sports	Q3 2025	Q3 2032
Phase 2	Plot C1	Social Rent/Retail/Sports	Q3 2023	Q1 2028
Phase 3	Plot B	Social Rent/Shared ownership	Q3 2025	Q1 2029
Phase 4	Plot C2	Market Sale/Retail/Sports	Q1 2027	Q3 2029
Phase 5	Plot E	Retail/Education/Moselle Square	Q2 2028	Q1 2030
Phase 6	Plot G	Market Sale/Retail	Q2 2028	Q4 2030
Phase 7	Plot F	Market Sale/Retail/Sports/Office	Q3 2028	Q2 2034

4.13 I note however that Mr Levine's CPO Scheme Appraisal only refers to four phases of development, rather than eight, and when I have tried to replicate the CPO Scheme Appraisal, I cannot reproduce the same 11.59% IRR it produces, but only a lower return.[13] One possible reason for this may be because the CPO Scheme Appraisal

[12] See paragraphs 7.38 to 7.40 of my proof of evidence
[13] This despite my application of Mr Levine's sales growth and cost inflation assumptions producing both a greater GVD and lower construction costs

adopts a different development timetable to the one set out above, although because the appraisal cash flow has not been produced it is not possible for me to confirm whether this is, in fact, the case. It could also be a result of some other currently undisclosed matter that 'sits behind' the released CPO Appraisal summary that I am unable to identify.

4.14 At paragraphs 3.18 - 3.20 of his proof, Mr Levine says that the first 3 phases of the CPO Scheme will now comprise 100% affordable housing, which will be delivered with the benefit of grant funding (although as I have noted above, construction of Plot D providing market sale housing will also be commenced at an early stage of the development timetable). Selina Mason notes at paragraph 8.2(a) of her proof, under the revised development timetable it is intended that all affordable housing in the CPO Scheme will be delivered by 2029.

4.15 Mr Levine also says that in addition to providing affordable housing at the beginning of the CPO Scheme, a delay in developing market sale housing provides Lendlease with the opportunity more long-term value growth, which will help '*cross-subsidise the earlier phases where there is an up-front financial burden*.'[14] However, this statement is contradicted by Selina Mason at paragraph 6.21 of her proof where she confirms that all of the CPO Scheme phases can be delivered and funded independently – although on the basis of the CPO Scheme Appraisal I find it difficult to see how this would be the case.

4.16 At paragraph 4.16(a) and (b) of her proof, Selina Mason further notes that demand for affordable housing is counter-cyclical and that Lendlease's phasing strategy decreases development and delivery risk. This accords with my experience and I am aware that, traditionally, developers might only seek a profit of, say, 6% on GDV for affordable homes where a sale to a Registered Provider or Council is normally pre-agreed, while 15-25% profit on GDV would commonly be required for market housing, depending on the perceived level of risk involved.[15]

4.17 Lendlease's phasing strategy therefore appears to be aimed at providing it with the opportunity to undertake low risk affordable housing development without the need

[14] See paragraph 3.20 of Mr Levine's proof of evidence
[15] Note that this is a different measure of return to IRR and reflects profit after finance costs have been deducted, as opposed to IRR which reflects a pre-finance cost return.

to carry out future private sale development to help fund it. Selina Mason says the affordable housing can be delivered and funded independently, implying development of the affordable housing is not reliant on the development of later market sale phases.

4.18 At paragraphs 8.2(c) and (d) of her proof, Selina Mason refers to the early delivery of social infrastructure to establish tangible positive change and create potential for regeneration growth. However, in the context of an eight phase, circa 10.5-year, development period (Q4 2023 to Q2 2034), the social infrastructure she speaks of in the form of the Library, Learning Centre and Moselle Square, will not be delivered until Phase 5, due to be completed in Q1 2030 - 6 years into the Scheme and well after all of the affordable housing has been completed in 2029. Only Plot F (Phase 7) of the CPO Scheme will be started after construction of the social infrastructure begins. I therefore disagree that social infrastructure will be delivered 'early' in the development and, as I explain in further detail below, because of this I consider there to be a significant risk that the regeneration growth benefits Selina Mason and Mr Levine speak about are overstated.

4.19 Also connected to the proposed delivery timetable, I note that at paragraph 9.7 of her proof, Selina Mason confirms there is a s.106 requirement to offer 40% of the commercial space in the Regeneration Scheme to existing businesses, and for the CPO Scheme alone this would mean circa 13,000 sq.ft of accommodation.[16] At paragraph 9.2 of her proof Selina Mason also confirms that 1,800 sqm GEA of accommodation is occupied by existing businesses on the High Road within the area covered by the CPO. As a rough conversion 1,800 sq.m GEA is likely to equate to at least 1,500 sqm NIA (16,140 sq.ft). She further confirms at paragraph 9.14 that High Road properties are not required before Q1 2025, from which I assume they may be required shortly after that date.

4.20 However, under Lendlease's revised phasing plan, the earliest programmed completion of replacement commercial space is at Plot C1 where 998 sq.ft. of retail accommodation is proposed in Q1 2028. This will be followed by 1,259 sq.ft of retail space at Plot C2 in Q3 2029. There will therefore only be a total 2,257 sq.ft. of retail space provided by Q3 2029 under the proposed phasing plan, more than 4-years

[16] 32,503sq.ft NIA of commercial space is proposed for the CPO Scheme x 40% = circa 13,000 sq.ft

after the date that Selina Mason says commercial properties in the High Road might be required. Sufficient commercial space to meet Lendlease's s.106 obligations will only be provided when Plot E is constructed, with completion currently expected in Q1 2030.

4.21 Considering the revised phasing strategy in the round, it is not a strategy that I would normally expect from a developer promoting a clearly viable scheme, where there would be a preference to drive an early measure of profit from market sales. Although Plot D (Phase 1B) provides market sale homes and will be started in Q3 2025, it is programmed to take seven years to complete, so few units are likely to be released during the early years of the scheme. The original phasing plan adopted for the FVA included market sales at an earlier point in the development programme and the 'back-loading' of the market housing demonstrates that Lendlease, quite reasonably, is trying to de-risk the CPO Scheme by effectively implementing a Mitigation Plan in advance of a requirement to do so under the Development Agreement.

4.22 Selina Mason's comments at section 7 of her proof indicates that Lendlease recognises delaying market sales and hoping for value growth is the only way it might potentially deliver market housing at a value that could achieve the Required Return for the CPO Scheme as a whole in the longer term. It is unlikely that market sale housing could achieve the Required Return at the current time, or for a number of years, even assuming strong rates of value growth. Hence the initial focus on affordable housing where the Development Agreement's Viability Conditions do not apply, and Mr Levine says lower returns are acceptable, on the basis that there is also lower risk.[17]

4.23 In my opinion, the 'pinch point' with this approach is likely to come in 2026 when the Pre-Planning Viability Condition will need to be satisfied for market housing provided in Phase 4. At this time, I consider that sales value growth, if any, will have been limited, social infrastructure (potentially providing a regeneration premium) will not have been developed, but construction costs will still have increased. If anything, the viability of both Phase 4 and the CPO Scheme as a whole is likely to have diminished and the Required Return will not be achievable for either. At this point Lendlease will face the choice of progressing the CPO Scheme, with the risk of continued returns

[17] See paragraph 5.17 of Mr Levine's proof of evidence

below the Required Return, or accepting the lower risk/lower returns Selina Mason says it will receive from the affordable housing development and terminating the Development Agreement so that it can re-focus resources on more profitable development.

Gross Development Value – Private Residential

4.24 At paragraph 3.22 of his proof, Mr Levine confirms that the CPO Scheme Appraisal adopts a current day value of £730 per sq.ft. for private residential housing. As I confirmed in my proof of evidence, I consider this to be reasonable.[18]

4.25 This is despite noting that in referring to comparable developments Mr Levine speaks of current sales rates being 'slow' and 'constrained', reflecting current market conditions.[19]

4.26 **Gross Development Value – Affordable Housing**

At paragraph 3.27 of his proof, Mr Levine says the social rent home values adopted in his CPO Scheme Appraisal are agreed between the Council and Lendlease. No information to verify this has been provided to me, but for the purpose of my analysis, I have assumed this to be correct.

4.27 I note that expected social rent home income for the Phase 1, Plot A blocks has reduced from the £124 per sq.ft assumed for the FVA, but the value expected from later phases of social rent homes has increased significantly – to £222.49 per sq.ft. for Plot B and £247.69 per sq,ft. for Plot C. Overall assumed social rent income has increased from £48,532,080 in the FVA to £82,366,750 in the CPO Appraisal, reflecting a revised average rate of £214.27 per sq.ft

4.28 The price to be paid by the Council for the Plot B and C social rent homes seems surprisingly high. The cost of the homes is said to be Index Linked to BCIS from December 2021 to the midpoint of construction[20] and while the calculation has not been explained it may account for some of the increase. I am however struggling to see how all of the increased value would come from indexation.

[18] See paragraph 7.25 of my proof of evidence
[19] See paragraphs 3.24 – 3.26 of Mr Levine's proof of evidence
[20] See page 20 CD 9.12.3

4.29 According to the revised CPO Scheme phasing plan construction of Plot B (Phase 3) will take place between Q3 2025 and Q1 2029, while construction of Plot C (Phase 2) will take place between Q3 2025 and Q1 2028. The construction mid-point dates are therefore approximately Q2 2027 (for Plot B) and Q4 2026 (for Plot C) respectively.

4.30 A review of the BCIS All-In Tender Price Index indicates that the Index stood at 344 in Q4 2021 and is forecast to be 427 in Q4 2026 and 436 in Q2 2027 (See Appendix CCR1). The predicted increase in the Index to Q4 2026 for Plot C is therefore 24.1%, and to Q2 2027 for Plot B is 26.7%. This would suggest that the initial value for Plot B was £175.60 per sq.ft[21] and for Plot C was £199.59 per sq.ft.[22] Values of this level appear out of all proportion with the values agreed for Plot A.

4.31 In contrast to the social rent home income, the value of the shared ownership housing has fallen from £18,958,200 to £15,911,948. This is because while Mr Levine says that a value of £380 per sq.ft has been adopted for shared ownership units,[23] the CPO Scheme Appraisal adopts £319 per sq.ft. While he does not make reference to this discrepancy in his proof, it is explained by the further reference in Mr Levine's appendix **CD 9.12.3** to a value of £190,000 per unit being assigned to shared equity residential units being offered to 46 existing residential leaseholders. Once this is reflected in the Block B shared ownership value it can be seen how an overall value of £319 per sq.ft has been calculated.

4.32 As with the FVA, the CPO Scheme appraisal makes no allowance to reflect the provisions for sale of shared ownership housing in the s.106 agreement, where only lower values might be achievable for units sold in the initial 6-month marketing period.[24] There is also no allowance for shared ownership legal fees.

4.33 **Grant Funding**

At paragraph 3.28 of his proof, Mr Levine observes that grant funding is reflected in the CPO Scheme Appraisal, and at Appendix **CD 9.12.3** it is confirmed for the first time that of the £70,312,000 Affordable Grant Funding, £51,936,000 can be drawn down at the project start, with the remainder being paid in December 2028. For the

[21] £222.49/1.267 = £175.60 per sq.ft
[22] £247.69/1.241 = £199.59 per sq.ft
[23] See Mr Levine's Appendix CD 9.12.3
[24] See paragraph 6.17 of my proof of evidence

£21,200,000 Mayor's Land Fund Grant, £10,000,000 can be drawn down at project start, with the remaining £11,200,000 available in January 2024.

4.34 However, no confirmation is provided of the milestones that have to be achieved to secure later tranches of funding.[25]

Gross development Value – Commercial

4.35 The commercial property values adopted by Mr Levine for the CPO Scheme Appraisal are the same as those previously confirmed as agreed with BNP for the FVA. I believe them to be reasonable.

4.36 I do however note from paragraph 4.10(e) of Selina Mason's evidence that Lendlease is discussing the potential for local businesses on the High Road to acquire new premises in the CPO Scheme on discounted terms. This has not been reflected in the CPO Scheme Appraisal.

Land Acquisition Costs

4.37 At paragraph 3.35 of his proof, Mr Levine says an EUV+ approach was adopted for the FVA. However, this does not appear to have been the case. The total acquisition land EUV stated in the FVA was the same amount adopted in DS2's FVA appraisal without any addition being made, other than for an allowance for Loss Payments and the compensation that it was estimated might be payable in the event of compulsory acquisition.

4.38 As I have previously explained, at paragraph 3.33 of his proof, Mr Levine confirms that the land acquisition cost of £47,547,405 adopted in the CPO Scheme Appraisal (unlike the FVA) reflects the PCE agreed between the Council and Lendlease. It is not clear whether the allowed costs reflect a risk allowance normally accounted for in a PCE. The assumptions around the timing of land acquisition costs are also not confirmed.

4.39 I note from **CD 9.12.13** that, the CPO Scheme Appraisal land acquisition cost includes 'all acquisition costs, compensation, disturbance (sic), SDLT, transaction costs etc.' However, it does not appear that any allowance has been made for the

[25] See paragraph 6.23 of my proof of evidence

cost, payable under the CPO Indemnity Agreement, of making and confirming CPO powers. These costs are likely to encompass everything defined as 'Relevant Expenses' in the Indemnity Agreement, including a contingency to reflect the risk of references to the Upper Tribunal (Lands Chamber) for disputed compensation. Although no information has been provided in relation to what these costs might be, I consider £1 million to be a reasonable estimate.

Construction Costs including Infrastructure Costs

4.40 Sales Vale Growth

At paragraph 3.37 of his proof, Mr Levine confirms that, for the purpose of the CPO Scheme Appraisal, the original Rider Levett Bucknall ('RLB') construction cost estimate used for the FVA has been increased in line with the average of the RICS BCIS All-In Tender Price Index increase and an index comprising a composite of leading cost advisors.

4.41 While I consider this approach would be reasonable if the CPO Scheme were to remain unchanged from the time that the original RLB construction costs estimate were provided, as I explain in my proof,[26] the Government is now requiring all residential buildings more than 18 metres in height to be provided with a second staircase, for fire safety reasons. This together with other changes in the Building Safety Act 2022 and recent and proposed changes to building regulations is likely to have increased the CPO Schemes' build cost on a 'like for like' basis.

4.42 In response to this point, at paragraph 5.11 of his proof, Mr Levine says that:

'*The full implications of the Building Safety Act 2022 and updates to Building Regulations have not yet been thoroughly worked through the Development, much of which is in outline and at an early stage of design evolution.*'

4.43 Despite at paragraph 5.12 admitting that, in his experience, the Building Safety Act 2022 can result in a loss of net (saleable) area from floorplates, Mr Levine then goes on to say:

[26] See paragraphs 7.28 – 7.31 of my proof of evidence

'*…I have been advised that at this early stage of design for buildings subject to an outline planning consent any resulting loss of revenue is able to be offset by cost reductions derived through design solutions.*'

4.44 This is not my experience of the impact of the Building Safety Act and no suggestion that 'design solutions' could be found to reduce build costs has been reflected in either the FVA or the CPO Scheme Appraisal. Indeed, if the impact on costs on changes to legislation have not been 'worked through', I cannot see how it is possible to say that cost reductions could be derived through design solutions.

4.45 Considering the BCIS Index uplift suggested by RLB, I also note that while in its letter of 11 September 2023 **(CD 9.12.6)** it is said that a build costs of £681,568,503 was agreed between the Council and Lendlease for the Regeneration Scheme, the 13 July 2022 letter from DS2 **(CD 4.36)** confirming the basis of the agreement between BNP and DS2 referred to an agreed build cost of £715,646,928. This is a 5% uplift from the RLB figure which reflects an agreed allowance for a contingency. However, if the addition of a contingency was agreed for the purpose of the FVA, it is not clear why would not also be correct to add one for the CPO Scheme Appraisal, or the revised Regeneration Scheme Appraisal.

4.46 If a 5% contingency were to be added to RLB's index increased construction cost estimate, a total building construction cost of £818,700,085 would be produced for the Regeneration Scheme (before cost inflation) and a building construction cost of £489,924,419 would be provided for the CPO Scheme, rather than the pre-inflation cost of £466,594,473 that is actually adopted.

4.47 There also appears to be some inconsistency between RLB's advice and the infrastructure costs adopted in Mr Levine's appraisal for the Regeneration Scheme. RLB confirms the average index adjusted infrastructure cost for the Regeneration Scheme to be £85,129,710, but the infrastructure costs adopted in Mr Levine's appraisal is only £84,820,891. For the CPO Scheme Appraisal (which is the relevant appraisal to consider in this case) Mr Levine has adopted an infrastructure cost of £43,111,859, but no explanation of how this cost has been calculated is provided.

4.48 In relation to the timing of when the infrastructure costs will be incurred, I note that the CPO Scheme Appraisal suggests that this will be during Phases 1-4. However, I also note that Selina Mason at paragraph 4.16(c) of her proof refers to 'social infrastructure', including Moselle Square, being brought forward at Phase 5 of the CPO Scheme. It is therefore not clear to what extent the cost of delivering Moselle Square is reflected in the CPO Scheme Appraisal at all.

Growth and Inflationary Measures

4.49 At paragraph 3.39 of his proof, Mr Levine notes that the agreed FVA reflected a 2.5%, per phase regeneration premium, although as the agreed FVA has never been released it is not clear how the regeneration premium was actually applied. While Mr Levine also says that the FVA did not include any growth or inflation assumptions, the fact that sales growth and cost inflation were not reflected may equally have reflected the commonly adopted appraisal assumption that general market sales value growth and build cost will cancel each other out over the life of a development project.

4.50 I would however accept that this is an overly simplistic approach, and in my experience, developers will often build sales growth and cost inflation assumptions into their appraisals. I can also confirm that I agree with Selina Mason (paragraph 7.10 of her proof), that the area covered by the Regeneration Scheme (and to a lesser extent the CPO Scheme) has potential to deliver regeneration growth, over and above normal sales value inflation.

4.51 I would point out however that the Development Agreement does not specify the approach to be adopted to value growth and cost inflation for the purpose of Pre and Post Planning Viability Appraisals. The fact that Mr Levine has reflected growth and inflation in the CPO Scheme Appraisal does not ensure that this will be the approach the Council and Lendlease will agree to adopt for the Development Agreement Viability Appraisals – and it is those appraisal's that will determine whether the CPO Scheme is deemed to be viable, or unviable to the extent that the Development Agreement termination provisions might ultimately be actioned.

4.52 I note that the s.106 Agreement for the Planning Permission provides for affordable housing viability reviews, where the inclusion of adjustments for growth and inflation are also possible – despite anything that might be inferred from Mr Levine's proof to the contrary. It remains to be seen if the Council is content to see viability measured on different basis under the Development Agreement and for the purpose of determining affordable housing numbers.

4.53 If growth and inflation allowances are to be incorporated within the Development Agreement appraisals, those allowances will need to be robust and defensible, so that they can be reasonably agreed.

4.54 For the CPO Scheme Appraisal Mr Levine has adopted a sales value growth rate of 5.25% per annum, which he appears to have assumed will commence immediately. The result of this adjustment is that income from the sale of private homes is assumed, on average over the life of the circa 10.5-year development, to produce sales value income circa 60.3% above that which could be achieved today. i.e. instead of achieving an average value of £730 per sq.ft., private sale homes are assumed to achieve an average of £1,170 per sq.ft. I would stress that this is not the assumed level of value that will be achievable once the development is completed, but the assumed average value that will be achieved over the life of the CPO Scheme. For example, for Plot F (Phase 7) the value increase is 68.8%, reflecting an assumed average value for private sale units in that phase of £1,233 per sq.ft.

4.55 Mr Levine makes this 10.5-year prediction, despite at paragraph 3.41 of his proof saying that forecasting growth is inherently difficult, and most forecasts do not go beyond a short time period.

4.56 To support his growth assumptions, at paragraph 3.45 of his proof Mr Levine references historic value increases in Haringey over a 25-year period. However, this measure is unhelpful and measuring historic house price growth over such a long timeframe is not a reliable indicator of future value growth. The macro and micro-economic factors at work today, and which will affect Tottenham's property market over the next 10 years, are completely different from the factors that influenced the market 15-25 years ago.

4.57 Value patterns over the last 10 years are a slightly more helpful indicator of future growth rates, but again different market conditions need to be taken into account. I can also confirm that while Mr Levine calculates average sales growth inflation in Haringey at 5.95% over the last 10 years, from my calculation it is only 5.2%.[27]

4.58 Mr Levine also references the fact that values over last 10 years will have been affected by the covid-19 pandemic and affordability issues. However, prior to covid-19 there was a strong market, post-recession, between 2013 and 2018 when interest rates were at a historic low and Help to Buy was in place. Growth over this period was above the overall 10-year average. Therefore, in the round, I consider the Land registry data to represent a balanced picture of how residential property values would have been expected to increase in Haringey (taking into account peaks and troughs in market conditions) over the last 10 years.

4.59 At paragraphs 3.41 – 3.43 of his proof, and his appendix at **CD 9.12.7**, Mr Levine also refers to value growth seen at a number of other estate regeneration schemes at Woodberry Down N4, Acton Gardens W3, Colindale NW9, Elephant Park, SE1 and Portobello Square, W10. However, I consider the conclusions he reaches in relation to these schemes to be questionable.

4.60 <u>Woodberry Down, N4</u>

This is a regeneration project I am familiar with as members of my team at Ardent are advising the London Borough of Hackney on securing and implementing compulsory purchase powers to deliver Phase 4 of the scheme. Before I joined Ardent, the firm also provided similar advice in relation to Phase 2.

4.61 Although Mr Levine says that he has assessed Molior to identify that flats for Phase 1 of Woodberry Down sold at average values of £477 per sq.ft in 2015 and that average values for Phase 3 in 2022/2023 were £1,010 per sq.ft, my research suggests average values achieved in 2015 were more in the order of £538 per sq.ft, while the most recent sales in 2022/2023 indicate average values in the order of £899 per sq.ft. Total growth over the period was therefore 67% (rather than 112%), reflecting annual growth of circa 6.6% per annum (see Appendix CCR2).

4.62 Moreover, while Mr Levine suggests that Woodberry Down provides evidence of a regeneration premium of 7.4% (9.8% - borough growth of 2.4%), I note that the CBRE

[27] Land Registry All House Price Index July 2013 79.9: July 2023 132.7. Circa 66% growth over the period – compound annual growth rate 5.2%

report he also refers to **(CD 9.12.8)** records a 'regeneration premium' of only 2.4% - albeit I recognise this reflects the impact on property values in the surrounding area, rather than the premium which might be seen within the scheme itself. Nonetheless, this appears more consistent with my value evidence where an increase in value of 6.6% per annum for the scheme, less 'normal' borough growth of 2.4% across Hackney generally, would suggest a regeneration premium of possibly 4.2% within Woodberry Down itself.

4.63 I also consider that any regeneration premium seen at Woodberry Down will have been far greater than that which might result from the CPO Scheme. Woodberry Down is a much larger 5,500 residential unit development (as opposed to the 1,488 units proposed for the CPO Scheme) and the impact of the circa 15 acres (over 60,000 sq.m) of greenspace[28] the CBRE report references as a factor creating its regeneration premium will have been significantly greater than the likely impact of the 3,500 sq.m Moselle Square proposed for the CPO Scheme.

4.64 <u>Acton Gardens, W3</u>

This development comprises a 52-acre site providing 3,300 new homes, so is again significantly larger than the CPO Scheme. While my research (See Appendix CCR2) suggests the 62% value growth (equating to 5% per annum) seen between 2013 and 2022/2023 that Mr Levine references to be broadly accurate,[29] I again consider that Acton Garden's is likely to have generated a greater regeneration premium than the CPO Scheme would. In addition to the development's greater size, and the improved impact of placemaking that creates, it also provides much a much larger area of green space than the CPO Scheme. Mr Levine's conclusion, which I do not dispute, is that a 1% per annum regeneration premium was seen at Acton Gardens (5% - borough growth of 4%).

4.65 <u>Colindale, NW9</u>

This regeneration scheme is, once again, much larger than the CPO Scheme and will deliver 10,170 homes across various sites. It will also provide improvements to Colindale Underground station and other transport upgrades, including new cycle lanes and pedestrian footpaths. In contrast, no material transport improvements are

[28] 7.4 acres (circa 30,000 sq.m) of which has already been provided
[29] I calculate the growth to be slightly less at circa 58%

proposed as part of the CPO Scheme. I note that the CBRE report also references transport improvements as a catalyst for regeneration premium.

4.66 My research (Appendix CCR2) suggests that Mr Levine's conclusion that values achieved at the development increased by 66% between 2012 and 2022, equating to 5.2% growth per annum, slightly underestimates the actual growth. I calculate overall growth at circa 79%, equating to 6% per annum. In contrast to Mr Levine's suggestion that Colindale saw a regeneration premium of 0.87% per annum (5.2% - borough growth of 4.33%), therefore calculate the premium to be 1.67% (6% - borough growth of 4.33%)

4.67 Elephant Park, SE1

This is once again a substantially larger regeneration scheme than the CPO Scheme. Elephant Park is a mixed-use regeneration project, that will eventually provide 42,000 sq.m of office space, 13,000 sqm of retail accommodation and 3,208 apartments. A 2-acre (over 8,000 sq.m) park will be provided at the centre of the development. I note that the CBRE report points to a retail offering being another factor that influences creation of a regeneration premium and the 13,000 sq.m of retail space at Elephant Park (9,000 sq.m of which has already been developed) compares favourably with the 2,960 sq.m of retail space to be provided as part of the CPO Scheme.

4.68 Although Mr Levine, relying on Molior, suggests that values at Elephant Park increased by 104% (9.3%) per annum between 2015 and 2023, my research (Appendix CCR2) indicates achieved values actually increased from an average of £633 per sq.ft to £935 per sq.ft over that period. i.e an increase of 47.7%, equating to 5% per annum. This compares to general growth across Southwark of 1.2% per annum, suggesting a regeneration premium of 3.8% per annum. Given the size of the Elephant Park development and its retail offer this is a significantly greater premium than I would expect to see at the CPO Scheme.

4.69 Portobello Square, W10

This development is more comparable in size with the CPO Scheme and will deliver circa 1,000 new homes, shops, community facilities and green space. Although my research suggests slightly higher values were achieved in both 2013/14 and 2022 it nonetheless broadly supports Mr Levine's conclusions on value growth. However, probably because of its smaller size (something Mr Levine notes as a factor), the value growth seen between 2013/14 and 2022 was only circa 16%-17, equating to 1.65 – 1.8% per annum. This compares to general borough growth for Kensington and Chelsea of 2.1% per annum, suggesting little or no regeneration premium was created at all. While Mr Levine also says the high underlying value of residential property in Kensington and Chelsea may have been a factor behind the lower sales value growth, the underlying sales value of £730 per sq.ft. at the CPO Scheme is also greater than the initial values seen at the other four developments he has referenced.

4.70 While at paragraph 7.20 of her proof, Selina Mason references Lendlease's intention to deliver social infrastructure early in the CPO Scheme delivery programme, as I have explained above,[30] the delivery will not, in fact, be early and the regeneration premium delivered by the CPO Scheme is likely to be less than that seen at the schemes Mr Levine has drawn attention to.

4.71 Development of Phase 1B (Plot D) of the CPO Scheme, which will provide 41.7% of all the CPO Scheme market sale housing private sale, is expected to commence in Q3 2025, 4.5 years before the social infrastructure to be provided at Phase 5 of the development will be completed in Q1 2030. Although Plot D will not be completed until Q3 2032, the CPO Scheme Appraisal assumes that 50% of sales will be achieved 'off-plan' prior to completion. Moreover, development of the market sale housing in Phase 4 (Plot C2) will be completed in Q3 2029, prior to delivery of the Phase 5 social infrastructure, and construction of the market sale housing in Plot G (Phase 6) will be completed in Q4 2030, only shortly after completion of the social infrastructure works. Therefore, a significant proportion of the pre-completion market sales the CPO Scheme Appraisal assumes for Plots D, C2 and G will have completed before the Phase 5 social infrastructure has been provided.

4.72 As a final comment on the issue of a regeneration premium, I consider it also worth exploring the potential impact of the factors said to be a catalyst for regeneration value growth in the CBRE report. These factors are the provision of green space, heritage, local community, retail offering, transport/connectivity and education.

[30] See paragraph 4.18 of this rebuttal report

i) *Green Space* – Moselle Square 3,500 sq.m only delivered later in the CPO Scheme, Phase 5 of 8. In comparison the CBRE Scheme examples are Woodberry Down, 15 acres (over 60,000 sq.m) of gardens and 42 acres of open water. Nine Elms a 4.5 hectare (45,000 sq.m) linear park.

ii) *Heritage* – The CPO Scheme will not retain any significant heritage features while the CBRE report references Nine Elms, which retains Battersea Power Station, and the gasholders at Kings Cross.

iii) *Local Community* – The CPO Scheme will provide 14,562 sq.ft of sports facilities, but its connection with THFC is likely to be limited. In comparison the CBRE report references the new community centre at Greenwich Peninsula and a £20 million leisure centre at the Elephant and Castle as examples of features that may have created a regeneration premium.

iv) *Retail Offering* – The CPO Scheme will provide circa 31,865 sq.ft of retail space, while the CBRE report references Westfield Shopping Centre at Stratford and the 940,000 sq.ft. of retail space at Canary Wharf as catalysts of regeneration value growth.

v) *Transport and Connectivity* – While the CPO Scheme will benefit from its proximity to White Hart Lane Station, it will not provide any transport infrastructure improvements. Although Selina Mason says at paragraph 2.3(c) of her proof that: '*Further improvement to public transport infrastructure to support expanding development in this area were, and remain, conceivable.*' No reference is made to any specific proposals. In contrast the CBRE report references Nine Elms with two new tube stations and Canary Wharf with the Elizabeth Line and its existing Jubilee Line access as examples of locations where transport improvements have led to a regeneration premium.

vii) *Education* – 13,143 sq.ft of education space will be provided by the CPO Scheme, but the CBRE report cites the extensive educational offer at Stratford and the 32,000 sq.m (344,445 sq.ft) Central St Martins campus at Kings Cross as examples of features that may have created a regeneration premium.

Ardent

4.73 Overall, my conclusion is that, having regard to both the evidence of value growth in Haringey over the last 10 years and the examples of regeneration scheme growth Mr Levine refers to, the 5.25% sales value growth rate he has adopted in the CPO Scheme Appraisal is acceptable, albeit at the upper end of the justifiable range. However, the growth should only be applied from the beginning of 2025 onwards.

4.74 My reason for believing that no sales value growth should be reflected during 2024 is that all the evidence points to the market being relatively flat next year.[31] Mr Levine also acknowledges that the market is subdued at paragraph 5.10 of his proof.

4.75 While I note that at paragraph 7.19 of her proof, Selina Mason says that Lendlease is confident that there is greater potential for Regeneration Growth than illustrated in the base case of the Appraisals (the CPO Appraisal and the Regeneration Appraisal), I disagree. The evidence of Haringey value growth over the last 10 years, from the other regeneration schemes Mr Levine has referenced, and market predictions over the next few years all indicate that while an assumed, upper end, value growth rate of 5.25% from the beginning of 2025 can be justified, the adoption of more than 5.25% would be imprudent and excessive.

4.76 Build Cost Inflation

Despite giving very detailed consideration to the issue of sales value growth, Mr Levine, has adopted a rather cursory approach to the issue of construction cost inflation, and has relied only on RLB's tender price forecast (see paragraph 3.50 of his proof), which I cannot see that he has submitted as evidence.

4.77 Using a similar measure to the one Mr Levine adopted for residential sales value growth, over the last 10 years (Q4 2013 to Q4 2023) All-In Tender Price construction costs have increased by 62.3%,[32] reflecting an average of 4.96% per annum (see Appendix CCR1). BCIS also forecasts a 13.9% increase over the next 4 years (Q4 2023 to Q4 2027),[33] which equates to 3.3% per annum.

[31] See paragraphs 7.23 to 7.25 of my proof of evidence
[32] Q4 2013 Index 239, Q4 2023 Index 388. 388/239 1.623 = 4.96% per annum
[33] Q4 2023 Index 388, Q4 2027 index 442. 442/388 = 1.139 = 3.3% per annum

4.78 On the basis of this evidence, but also taking into account what Mr Levine says is RLB's view (subject to evidence of that being confirmed), I consider that a cost inflation rate of 3.25% is more appropriate than 3%.

4.79 I also note that while Mr Levine has applied cost inflation to building construction costs, he has not done the same for infrastructure costs. I believe this may have been an oversight and infrastructure cost inflation should clearly be built into the CPO Scheme Appraisal.

5 APPRAISAL RESULTS AND VIABILITY SUMMARY

5.1 I have already explained that the CPO Scheme Appraisal **(CD 9.12.2)** differs from the agreed FVA in the following ways:

i) There are variations in unit numbers, tenures and net and gross floor areas for some development phases

ii) The development phasing pattern has been altered, but it is not clear whether the approach used in the CPO Scheme Appraisal aligns with the phasing plan at paragraph 8.4 of Selina Mason's proof.

iii) There has been an increase in the adopted current day residential market sales value from £700 to £730 per sq.ft

iv) While for the FVA a cumulative regeneration premium of 2.5% was applied to each new group of private sales blocks coming to the market, the CPO Scheme Appraisal assumes a 5.25% annual growth rate from the outset of the development (reflecting both general market price inflation and a regeneration premium).

v) The affordable housing sales values have been altered to reflect what is said to be an agreement reached with the Council.

vi) Increased build costs are assumed for the CPO Scheme Appraisal, and the application of an annual cost inflation rate of 3%. However, while in the FVA the build costs included a contingency allowance, for the CPO Scheme Appraisal there is no allowance for a contingency.

vii) Assumed land acquisition costs have been increased in line with CBRE's PCE.

5.2 In addition to the above, a number of other inputs have been altered between the FVA and the CPO Scheme Appraisal. Some of these variations are explained, but others are not; or the basis of their calculation has not been confirmed so that it is not possible to tell how they have been applied to the CPO Appraisal. These changes can be summarised as:

i) The rate of market unit sales adopted following practical completion of any particular phase. The rate finally agreed for the FVA has not been confirmed, but DS2 initially adopted 5-6 per month while BNP adopted 8.

ii) How the Indexing to the social rented homes in later phases of the CPO Scheme has been calculated.

iii) For the Regeneration Scheme Appraisal, the allowance for s.106 costs in the sum of £501,926 adopted in the FVA has been increased to £1,732,001 to reflect the agreed s.106. Of this £1,020,001 has been applied to the CPO Scheme.

iv) The amount allowed for carbon offset remains largely unchanged (there is only a minor variation), and in his appendix at CD 9.12.3 Mr Levine says that £428,087 applies to the CPO Scheme.

v) For the FVA CIL for the Regeneration Scheme was estimated at £10,000,001. However, for the Regeneration Scheme £9,795,976 is now adopted, while a CIL allowance of £5,192,324 is applied to the CPO Scheme.

vi) The land acquisition agents fee has been reduced from to 1% from 1.3%. As it is proposed that the land will be acquired using compulsory purchase powers, I would question this. It is not unusual for compensation negotiations to become protracted and in my experience fees for negotiating and agreeing compensation are likely to exceed 1% of compensation.

vii) Legal acquisition fees have been increased to 0.8% from 0.5%. For the same reasons explained for agent acquisition fees, I consider this to be reasonable.

viii) An allowance of 1.5% of private residential sales GDV is now included for marketing costs. This allowance was also included in DS2's original FVA but was removed when the FVA was agreed with BNP.

5.3 Mr Levine summarises the results of his appraisals at table 1 (paragraph 4.1) in his proof, which confirms that his CPO Scheme Appraisal produces an IRR of 11.59%

for the CPO Scheme and an 'ungeared' return of £169 million. However, the return figure is somewhat misleading as the IRR is calculated before finance costs.

5.4 The CPO Statement of Case confirms that Lendlease will fund the CPO Scheme through borrowing and the use of equity,[34] the later which will involve an 'opportunity cost' as capital will be tied up in the project which could be used to derive profits elsewhere. The true net financial return from the CPO Scheme would, even adopting Mr Levine's valuation methodology, be significantly less than £169 million. I consider what the actual financial return from the CPO Scheme might be, taking into account finance and equity opportunity costs below.

5.5 At paragraph 4.4 of his proof, Mr Levine displays Table 2, which provides a sensitivity analysis for the CPO Scheme Appraisal. I note that the maximum construction cost growth assumed is 4% per annum, while the minimum sales value growth assumed is 4.5%. However even on this basis it can be seen that to reach the target IRR of 13% agreed for the FVA, there must be a 6%+ sales growth if construction cost inflation is set at the 3.25% rate I consider to be appropriate. It is also the case that if sales growth is 5% or less, construction growth would have to average less than 2.5% over the construction period to achieve 13% IRR. It also needs to be borne in mind that the relevant metric for assessing the viability of the CPO Scheme is the Required Return specified in the development Agreement. While this has not been released, I consider it likely that the Required Return will be more than 13%, rather than less.

5.6 At paragraph 4.5 of his proof, Mr Levine says that '*the returns indicated for the Consented Scheme provide Lendlease with a significant financial incentive to proceed.*' However, the 'returns' Mr Levine refers to do not reflect finance costs, which have increased significantly since the FVA was agreed[35] and are likely to remain higher than they were at that time throughout the lifetime of the development.

5.7 At paragraphs 7.3 and 11.15 of her proof, Selina Mason says that the projected returns for the CPO Scheme are broadly in line with the typical adjusted returns that Lendlease would expect from an urban regeneration project. However, she does not confirm what these expected returns are, or whether they are returns that are

[34] See paragraph 7.28 of the CPO Statement of Case
[35] See paragraph 7.39 of my proof of evidence

consistent with the Required Return within the Development Agreement – which is the relevant metric for determining the viability of the CPO Scheme and the extent to which there is a risk that viability might be an impediment to its delivery.

5.8 From a developer's perspective, whether there is a '*significant financial incentive to proceed'* does not depend upon the absolute amount of profit produced, but instead on how the financial return from a particular development compares with alternative development opportunities. If a development opportunity produces an inferior return to alternative opportunities in the market and/or there is a material risk connected to achieving that return, developers will prefer to invest in alternative opportunities, or not invest at all.

5.9 Although at paragraph 7.8 of her proof Selina Mason suggests the CPO Scheme provides certainty on revenue timings and quantum, justifying lower projected returns, I disagree.[36] While the affordable housing element of the CPO Scheme provides a degree of certainty and lower risk, the delay in developing market sale housing creates greater risk around the timing and quantum of revenue from this element of the development. The longer the period until market sale development commences the less reliable sales value improvement and construction cost growth predictions become.

5.10 In my opinion, given current market conditions, few if any developers would choose to take on the CPO Scheme at the current time, and at paragraph 7.5 of her proof, Selina Mason acknowledges that varied house price growth and above average inflationary pressure on build costs are impacting developments across the country. I have personal experience of a number of CPO Regeneration projects in London that have been paused, or where private sector development partners have withdrawn in light of the current difficult market conditions.

5.11 I consider it likely that Lendlease is only progressing with the CPO Scheme because of its historic involvement (which has involved it incurring a fairly significant sum of 'sunk costs') and because it considers itself to be committed, subject to the terms of the Development Agreement, which can be terminated if its Viability Conditions are not met.

[36] See also paragraph 4.6 of Mr Levine's proof of evidence

5.12 Mr Levine's CPO Scheme Appraisal demonstrates that, at the current time, despite the assertion in the CPO Statement of Case that:

'*Lendlease is satisfied that the development permitted by the Planning Permission is viable*'[37]

the CPO Scheme is clearly not currently viable in terms of being able to achieve the return agreed by DS2 and BNP for the FVA or, probably, the Development Agreement Required Return.

5.13 I note that, despite referencing the total financial return and the 'reasonable rate of return'[38] he says the CPO Scheme will produce, Mr Levine avoids saying that the CPO Scheme is viable when assessed against the Development Agreement Viability Conditions. He instead appears to take comfort from the fact that the viability conditions will only first be engaged for Phase 4 in 2027 – at which time Lendlease no doubt hopes that a Development Agreement viability appraisal will produce a better result.

5.14 However, Mr Levine has not produced an appraisal for Phase 4 of the CPO Scheme adopting his sales growth and cost inflation assumptions, nor has he considered to what extent the CPO Scheme as a whole might be able to achieve the Required Return at that date.

5.15 In order to assist the Inquiry I have therefore produced four additional viability appraisals which:

i) Attempt to replicate Mr Levine's CPO Scheme Appraisal
ii) Adjust the CPO Scheme Appraisal to take account of factors which I consider Mr Levine should have reflected in that appraisal, but has not
iii) Considers the viability of Phase 4 of the CPO Scheme on the assumption that it will be the subject of the Development Agreement Viability Conditions in 2027
iv) Considers the profitability of the CPO Scheme, once a reasonable level of finance cost is taken into account

[37] See paragraph 7.38.7 of the CPO Statement of Case
[38] See paragraph 4.6 of Mr Levine's proof of evidence

i) Replication the CPO Scheme Appraisal

5.16 Although I have attempted to replicate Mr Levine's appraisal using the inputs he says he has adopted, I have not been able to do so and the closest replication I have been able to achieve is at Appendix CCR3. While it will be seen that this duplicates all of Mr Levine's financial inputs, my appraisal only produces an IRR of 7.66%.

5.17 I cannot be sure of the reasons for this without sight of the cashflow forecast that sits behind the summary of the CPO Scheme Appraisal Mr Levine has produced, but I consider the most likely explanation to be that he has adopted a different phasing timetable to that provided by Serina Mason at paragraph 8.4 of her proof.

5.18 I am happy to exchange the Argus Developer files I have for my appraisal with Mr Levine, if he also shares his with me. This will assist me in identifying any assumptions he may have made which either I have misinterpreted, or which he may not have fully explained.

5.19 However, on the basis of my current investigations, even adopting Mr Levine's value inputs, I cannot see how the CPO Appraisal could produce an IRR of 11.59%.

ii) My Adjusted CPO Scheme Appraisal

5.20 Using Appraisal i) as a starting point, I have then made the following adjustments, which I consider to be appropriate taking into account the various concerns I have with the CPO Scheme Appraisal I have outlined in this rebuttal proof.

a) I have added 5% to the construction costs to make allowance for the same contingency included in the FVA.

b) I have assumed 3.25% construction cost inflation, which I consider to be a prudent allowance a reasonable valuer would apply when undertaking a viability appraisal under the terms of the Development Agreement.

c) I have applied construction cost inflation and professional fees to the Infrastructure Costs.

d) I have assumed that sales price growth of 5.25% would commence from the beginning of 2025, but there would be no growth prior to this date.

e) I have made an allowance of £1 million for costs associated with obtaining a CPO and allowing for the risk of Upper Tribunal (Lands Chamber) proceedings.

f) I have made an allowance for shared ownership home legal fees.

5.21 My appraisal reflecting these adjustments is at Appendix CCR4. The appraisal produces an IRR of 4.2%. I would also note that the appraisal does not take into account that potential construction costs increases arising from the Building Safety Act 2022 and recent and proposed changes to Building Regulations have not been reflected in RLB's updated construction cost estimate for the CPO Scheme. Nor does my adjusted appraisal reflect the possibility that income from shared ownership units and commercial space might be less than that assumed in the CPO Scheme Appraisal.[39] I have further assumed that the queries I have raised around social rented housing indexation, and the scope of the infrastructure costs can be satisfactorily answered.

iii) Phase 4 Appraisal

5.22 This appraisal, attached at Appendix CCR5, adopts the inputs to appraisal ii) but considers the Phase 4 development in isolation. It will be seen that my conclusion is that Phase 4 will be loss making (even assuming value growth) producing an IRR of -1.27%. This is primarily because I have assumed (in line with the CPO Scheme Appraisal), that Phase 4 would have the burden of £11.122 million of infrastructure costs.

iv) My Adjusted CPO Scheme Appraisal with an allowance for Finance Costs

5.23 This appraisal is attached at Appendix CCR6 and illustrates, assuming finance costs at 8%, the CPO Scheme would make an overall loss.

5.24 While the version of Argus developer I have used adopts only a simplified approach to finance, assuming that they finance costs apply to all development costs, without taking into account developer's equity or charges that a lender might raise (such as

[39] See paragraphs 4.31 and 4.35 of this rebuttal report

a cost overrun guarantee), I nonetheless consider my appraisal provides a broad illustration of how finance costs could affect the net return achieved from the CPO Scheme.

5.25 I note that at paragraph 4.15 of his proof Mr Levine suggests the Regeneration Scheme yields a profit of 15.14% ‘on value’. However, he provides no appraisal to demonstrate this and no profit estimation at all for the CPO Scheme. As the CPO Scheme is the project for which the Council is seeking compulsory purchase powers, the profit that might be derived from the Regeneration Scheme is irrelevant.

Conclusions

5.26 My conclusion is that, even before making proper adjustments not reflected in the CPO Scheme Appraisal, the CPO Scheme does not meet the 13% IRR financial target agreed for the FVA. I consider that is also highly likely that it would not meet the Development Agreement Required Return. Making the adjustments I consider to be appropriate the viability of the CPO Scheme is further impacted, making it even less likely that the Required Return would be achieved.

5.27 Moreover, I consider it highly likely that Phase 4 of the CPO Scheme will fail to meet the Development Agreement viability conditions when it is appraised in 2027. The CPO Scheme as a whole is also highly unlikely to meet the viability conditions at that time.

5.28 Allowing for finance costs, the developer’s profit that the CPO Scheme will produce is below the level that I consider would currently attract demand for the CPO Scheme from other developers in the market place. Mr Levine has provided no assessment of the profit the CPO Scheme would produce in his proof.

6 RESPONSE TO OBJECTIONS

6.1 At paragraphs 5.2 and 5.4 of his proof Mr Levine says that the CPO Scheme is profitable and produces a positive developer return. The same point is made by Selina Mason at paragraph 11.14 of her proof. However, the fact that the CPO Scheme creates a measure of profit isn't the test that has to be met in terms of determining whether viability is an issue that might create an impediment to its delivery. The test is, in fact, whether the Required Return stated in the Development Agreement is achievable and the extent to which this creates a risk that its viability conditions will not be met. If they are not, the lack of viability will become a Mitigation Matter which, if it cannot be remedied through a Mitigation Plan, creates the risk that the Development Agreement for a particular phase, or the CPO Scheme as a whole, will be terminated. While Selina Mason, understandably for the purpose of this Inquiry, says that Lendlease will accept a lower return than the Required Return, it cannot be guaranteed that Lendlease will take the same approach when the Development Agreement viability conditions are actioned.

6.2 Lendlease is a private development company, that has an obligation to act in the best interest of its shareholders. It is reasonable to assume it will do so in the future when considering the level of return the CPO Scheme will produce.

6.3 As I have previously noted, at paragraphs 5.11 – 5.14 of his proof, Mr Levine confirms a that the implications of the Building Safety Act 2022 provisions have not been reflected in updated cost estimates. There is therefore a material risk that the construction costs assumed for the CPO Scheme Appraisal will increase. While he suggests the 'impact of reduced efficiencies can in part be mitigated' this falls short of saying he believes they will be entirely mitigated. Mr Levine also acknowledges that there might be an impact on developer returns.

6.4 At paragraph 5.15 of his proof, Mr Levine says infrastructure costs have been cash flowed in line with the latest information available from Lendlease. However, it is not clear that this is actually the case. The CPO Scheme appraisal refers to infrastructure costs being incurred over four phases, but Selina Mason says that social infrastructure costs will be incurred at Phase 5. As I have previously confirmed, no cost inflation has been applied to infrastructure costs, which I consider must be an oversight.

6.5 At paragraph 5.21 of his proof, Mr Levine seeks to distance the CPO Scheme from the viability issues that resulted in a refusal to grant compulsory purchase powers at Vicarage Field. He seems to imply that the Vicarage Field scheme would have made no return. However, this is not the case and the issue at Vicarage Field was not that the scheme would make no return, but that insufficient evidence was submitted to demonstrate the scheme was viable.

6.6 The Inquiry, in fact, heard oral evidence that Vicarage Field would make 14.8% profit, against a target of 15%.[40] The Inspector's concern was that both the Financial Viability Assessment (undertaken by DS2) and the review carried out by GVA concluded that the Vicarage Field scheme was unviable – in the same way that the FVA for the CPO Scheme concluded it was unviable.[41]

6.7 Also in the same way that is being suggested for the CPO Scheme, the Acquiring Authority at Vicarage Field argued that viability would be delivered by value growth,[42] including a regeneration premium,[43] with the Inspector noting that the GVA review of the Vicarage Field FVA indicated that there would need to be a 62% increase in sales values to make the development viable.[44]

6.8 In my assessment, rather than the circumstances at Vicarage Fields being entirely different from those at the CPO Scheme, there are clear parallels.

[40] See paragraph 131 of the Vicarage Field Inspector's Report
[41] See paragraph 1.11.1.6 of the FVA.
[42] See paragraph 135 of the Vicarage Field Inspector's Report
[43] See paragraph 149 of the Vicarage Field Inspector's Report
[44] See paragraph 136 of the Vicarage Field Inspector's Report

7 SUMMARY OF CONCLUSIONS

7.1 Although Mr Levine describes the CPO Scheme as producing a ‘reasonable rate of return’, this is not the measure of viability against which the CPO Scheme should be judged.

7.2 The extent to which a lack of viability might be an impediment to the delivery of the CPO Scheme must be considered having regard the terms of the Development Agreement and both the ability of individual phases and the CPO Scheme as a whole to produce the Required Return that must be achieved to satisfy the Development Agreement Viability Conditions. If the Required Return cannot be achieved it becomes a Mitigation Matter requiring a Mitigation Plan. However, if the Mitigation Plan cannot resolve the viability issue and the Development Agreement Viability Conditions are not met by a certain date, either party to the agreement can terminate it in relation to a certain phase.

7.3 Although the Required Return in the Development Agreement is redacted, it appears unlikely that the CPO Scheme, or individual phases of it, are currently able to meet that viability target. The CPO Scheme is also not viable in terms of its ability to meet the target financial return agreed between DS2 and BNP for the FVA. Mr Levine cannot confirm whether the CPO Scheme is viable or not in the context of the Development Agreement, as he says he is also unaware of the Required Return.

7.4 It is also likely that the CPO Scheme (and Phase 4 of the scheme) will not be able to meet the Development Agreement viability conditions in 2027 (or probably 2026), when it is said that the first viability appraisals will need to be undertaken.

7.5 This is despite Lendlease’s response to the challenges facing the CPO Scheme, which consists of pushing back the development of market housing in anticipation of future sales value growth. In the interim, development of affordable housing can be progressed and affordable housing development involves lower risk, which in turn justifies lower acceptable returns than market sale housing. The affordable housing development can therefore be undertaken independently from the remainder of the CPO Scheme and does not require cross-subsidy. In effect, Lendlease has already put in place a Mitigation Plan and Mr Levine’s CPO Scheme Appraisal is said to reflect that plan - albeit it is not entirely clear that it does. The only other Mitigation

Matter Selina Mason suggests is for Lendlease to accept a reduced return, but its willingness to do that, certainly for any protracted period, cannot be guaranteed.

7.6 Mr Levine's CPO Scheme Appraisal differs from the FVA and takes into account sales value growth and construction cost inflation. I have no material issue with that approach, subject to the inputs to the appraisal being justified. In my opinion, the CPO Scheme Appraisal has a number of incorrect inputs and there are also some omissions which need to be rectified. However, even before those adjustments are made, the CPO Scheme Appraisal fails to produce an IRR that meets the agreed FVA target (and I suspect the Development Agreement Required Return) . Moreover, when I have tried to replicate the CPO Scheme Appraisal I can only obtain a lower IRR. Although I cannot be certain, this may be because Mr Levine has not adopted Lendlease's revised phasing plan, as advised by Selina Mason

7.7 Once the adjustments to the appraisal I consider to be appropriate (including adding a contingency for construction costs, increasing the construction cost inflation rate slightly, correcting the omission of not taking inflation into account for infrastructure costs and making an allowance for CPO promotion and litigation risk costs) are taken into account, the achievable IRR falls even further.

7.8 Unlike Mr Levine, I have also considered whether Phase 4 of the CPO Scheme might be viable when it is subject to the Development Agreement viability conditions in 2027. My appraisal indicates that it is unlikely to be, and I believe that if this is the case, this could be a 'pinch point' in terms of Lendlease's decision to progress with the CPO Scheme. It will have completed low risk, stand alone, affordable housing which will have produced a lower, but adequate, return with the benefit of grant, and will have the choice whether then to progress with a higher risk market sales development with what may be a questionable ability to deliver the Required Return, or exit the development under the Development Agreement termination provisions. Funding might also be an issue.

7.9 I consider that there is a material risk that the development will still be unable to achieve the Required Return in 2027 and potentially for a considerable period thereafter.

7.10 Ultimately, it is for the Acquiring Authority to demonstrate that viability will not be an impediment to delivery of the CPO Scheme. In my opinion, so far, it has not.

8 STATEMENTS OF TRUTH AND DECLARATION

Statement of Truth

8.1 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. **I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.**

8.2 **Declaration**

I confirm that my report has drawn attention to all material facts which are relevant and have affected my professional opinion.

8.3 I confirm that I understand and have complied with my duty to the Court as an expert witness which overrides any duty to those instructing or paying me, that I have given my advice impartially and objectively, and that I will continue to comply with that duty as required.

8.4 I confirm that I am not instructed under any conditional or other success-based fee arrangement.

8.5 I confirm that I have no conflict of interest of any kind.

8.6 I can confirm that I aware of and have complied with the requirements, rules and directions of the County Court.

8.7 I confirm that my report complies with the requirements of the RICS – Royal Institution of Chartered Surveyors, as set down in the RICS practice statement and guidance note *Surveyors acting as expert witnesses.*

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Colin Michael David Cottage
BSc (Hons) MRICS
31 October 2023