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

CLOSING SUBMISSIONS ON BEHALF OF THE ACQUIRING AUTHORITY

Unless otherwise stated, defined terms are as set out in the Glossary[1].

Introduction

1. Having been tested through the course of this inquiry, the evidence shows that the requisite[2] compelling case in the public interest for confirmation of the Order is clearly established.

2. In summary, the Order is founded upon a well-established and evidenced strategic objective for regeneration, which is clearly expressed throughout the sequence of Council policy documents that apply to the Order Land. The Scheme will deliver very substantial and urgently needed social, economic and environmental benefits, in fulfilment of the Council's longstanding strategic and planning policy objectives for High Road West. It demonstrably fits in with the planning framework. Planning permission is in place and THFC's legal challenge has been dismissed. Funding arrangements are also in place; the Scheme has been appraised and produces a positive return in line with Lendlease's current market expectations as delivery partner. Moreover, the DA makes positive provision to enable delivery of the Scheme in the event of failure to satisfy the viability condition(s) in relation to any given phase to which those conditions apply. Finally, appropriate efforts have been made by the Council and Lendlease to acquire by agreement the land and rights necessary for the Scheme. Policy commitments are in place to provide appropriate support to displaced residential and business occupiers. Although compulsory purchase will undeniably affect the Article 8 and Article 1 Protocol 1 rights of objectors, the requirement for the objectors' land has been established and the case for acquisition in order to realise the demonstrable benefits of redevelopment of the Order Lands in accordance with the Planning Permission is compelling and proportionate.

[1] CD5.10. Additionally: references to a witness accepting, acknowledging, agreeing, clarifying, confirming, identifying or recognising a point are references to their cross-examination, unless stated otherwise.
[2] 2019 Guidance (CD5.01), paras. 2 and 12.

3. We return to all of these matters below. The remainder of these closing submissions is structured as follows:
   3.1. The planning framework for the area (the Inspector's Main Issue 1[3]);
   3.2. The extent to which the Scheme would contribute to the economic, social or environmental well-being of the area (the Inspector's Main Issue 2);
   3.3. Potential alternatives (i.e. whether the purpose for which the Order Land would be acquired could be achieved by any other means – the Inspector's Main Issue 3);
   3.4. Whether the Scheme is financially viable (the Inspector's Main Issue 4);
   3.5. Whether there are any impediments to the implementation of the Scheme (the Inspector's Main Issue 5);
   3.6. Other points made by objectors (including whether the Council has taken reasonable steps to acquire the Order Land by agreement);
   3.7. Human rights and the Public Sector Equality Duty ("**PSED**"); and
   3.8. Conclusion.

The planning framework for the area – Main Issue 1

4. In satisfaction of the 2019 guidance[4], the Council has a clear idea of how it intends to use the Order Land and the Order is supported by a clear strategic framework, the evolution of which is explained by Mr O'Brien in section 4 of his main proof[5]. Para. 5.85 of the TAAP[6] identifies High Road West as one of three major regeneration and development schemes in the North Tottenham Neighbourhood Area that "will transform an area that currently experiences fundamental social and economic disadvantage […] and which is dominated by poorly designed and fragmented housing estates and industrial land…". Para. 5.86 identifies the focus for High Road West as the delivery of transformative housing estate renewal. Site allocation NT5 within the TAAP was identified through the HRWMF[7] following extensive engagement with and public consultation of the local community. It provides as follows:

   "Masterplanned, comprehensive development creating a new residential neighbourhood and a new leisure destination for London. The residential-led mixed-use development will include a new high quality public square and an expanded local shopping centre, as well as an uplift in the amount and quality of open space and improved community infrastructure".

[3] CD5.11 para. 9.
[4] CD5.01 paras. 13 and 104.
[5] CD9.01.
[6] CD3.5.
[7] CD3.6.

(TAAP p. 102)

5. The purpose of the Order is to enable the Council to complete the assembly of the land and rights required to carry out Phase A, i.e. the first phase of development of site allocation NT5. That purpose fits in with both the Council's adopted Local Plan and with the NPPF[8]. That point is evidenced *inter alia* by the fact that the Planning Permission[9] was granted by the Council for the development of the High Road West site both north and south of White Hart Lane on 31 August 2022 and has since successfully withstood the legal challenge brought by THFC.

6. Mr Horne analyses the performance of both the Scheme and the Consented Scheme in great detail in section 5 of his proof[10]. An earlier, similarly comprehensive appraisal of the larger Regeneration Scheme against all relevant planning policy is set out in the officer's report for the Planning Permission and its associated addendum report[11]. Mr Horne notes that the Order Land forms part of land identified in the Council's adopted Local Plan as a key regeneration area capable of accommodating significant growth. Investment in new housing and employment opportunities in North Tottenham has long been a priority for the Council: the Scheme is specifically the subject of site allocation NT5 in the TAAP and has an adopted masterplan, the HRWMF, which sets the guidelines for delivering that site allocation. Mr Horne is correct to identify that the Scheme will deliver on the key policy requirements and principles within the adopted development plan and the broader planning framework (which also includes the NPPF).

7. As Mr Horne concludes, the acquisition of the Order Land will facilitate the delivery of the Consented Scheme and by extension a significant number of national, strategic and local policy goals. We consider the Scheme's contribution to the economic, social and environmental well-being of the area below.

8. THFC complains[12] that the Scheme – "i.e. redeveloping only the land to the south of WHL" – does not "constitute the comprehensive redevelopment envisaged in the development plan". There is nothing in that complaint. The first "Site Requirement" in TAAP site allocation NT5 is "[t]he site will be brought forward in a comprehensive manner to best optimise the regeneration

[8] See CD5.01 (2019 Guidance), para. 106 (first bullet point).
[9] HGY/2021/3175 (CD4.28).
[10] CD9.05.
[11] CD4.9 and CD4.25.
[12] CD11.04 paras. 6 and 7.

opportunity". Nevertheless as Mr Bashforth acknowledges[13], the TAAP does allow site allocations to come forward part-by-part: see Policy AAP1(A) of the TAAP and also Policy DM55 of the Council's Development Management DPD[14]. The policy position adopted by the Council is entirely unsurprising, given that major schemes of the scale of the High Road West regeneration routinely come forward on a phased basis (rather than as a single whole).

9. Moreover, the Council (as local planning authority) in granting the Planning Permission was alive to the possibility that the land to the south of White Hart Lane would be delivered ahead of the land to the north of White Hart Lane: see the Planning Statement[15]. It is highly relevant that THFC's concern that the proposed phased delivery of the NT5 site allocation would not align with the development plan was not shared by the author of the officer's report ("**OR**") for the Planning Permission. In response to the comments of the Quality Review Panel, which (like Mr Bashforth) raised concern over the delivery of Peacock Park, the OR advised as follows[16]:

   "Officers note that it is normal for and inevitable that large projects such as this will be delivered in phases over a number of years, most likely including periods when the extent of completed public open space does not yet match the ambition for the final scheme, but the applicants *[sic]* Meanwhile Strategy will also contribute to a good quality of life for earlier residents.

   Ultimately the comprehensive development proposed seeks to avoid piecemeal development and this is supported by AAP Policies AAP1 and AAP2 which seek comprehensive development and support site assembly".

10. In xx, Mr Serra agreed that implementation of the Planning Permission to the south of White Hart Lane through the Order Scheme would not prejudice THFC's ability to carry out the authorised development on site within its ownership to the north of White Hart Lane. Indeed the Planning Permission granted for the Regeneration Scheme accommodates that possibility.

11. THFC's core contention is that delivery of the Scheme in accordance with the Planning Permission would "frustrate the delivery of the outcomes sought by [site allocation NT5] in the development plan" because it would "not create a new leisure destination for London"[17]. That contention is unfounded. Contrary to that contention, the leisure provision within the Scheme satisfies the

[13] CD9.19 para. 4.12.
[14] CD3.7.
[15] CD4.02 para. 8.4 (p. 130).
[16] CD4.09 p. 76.
[17] CD11.04, para. 18.

requirements of the development plan and was found to be acceptable by the Local Planning Authority (see paragraph 4.22 of the OR).

11.1. The references within the TAAP[18] to "a premier leisure destination for London" (emphasis added) are referring to North Tottenham, not to High Road West specifically. THFC have misread the relevant requirements of the TAAP. Thus[19]:

11.1.1. Para. 2.37 of the TAAP states that "[i]n North Tottenham, there is a need to realise the investment being made by Tottenham Hotspur FC on their stadium site as a catalyst for wider change, ensuring this area becomes a hub of activity throughout the week and not just on match days. This can be achieved by establishing the location as a premier leisure destination for London whilst also retaining and enhancing a more local retail function to support the community".

11.1.2. Para. 3.9 is similarly worded: "North Tottenham has undergone significant change. Following the successful redevelopment of the THFC Stadium, this provided a catalyst and anchor for the High Street and the area, and is now the premier leisure destination in London".

11.1.3. Para. 3.23 states: "In the North Tottenham neighbourhood, the new Tottenham Hotspur FC stadium development will provide the catalyst for comprehensive regeneration of both High Road West and Northumberland Park. […] Provision is therefore proposed for new community facilities and leisure orientated retail development to further cement the area's reputation as a premier leisure destination within North London".

11.1.4. The reference at para. 5.87 to "create a premier leisure and sports destination for London" similarly relates to the North Tottenham Neighbourhood Area and not to High Road West specifically.

[18] CD3.5.
[19] All emphases added.

11.2. In short: where the TAAP refers to a premier leisure destination for London it is referring to North Tottenham, including the THFC stadium. The HRWMF[20] does not refer at all to a "premier" leisure destination.

11.3. Turning to consider the TAAP's ambitions for High Road West specifically, site allocation NT5 is summarised at para. 5.125 as "[m]asterplanned, comprehensive development creating a new residential neighbourhood and a new leisure destination for London". The development is described as "residential-led mixed-use" and as including "a new high quality public square and an expanded local shopping centre, as well as an uplift in the amount and quality of open space and improved community infrastructure". The Scheme would provide all of those elements. The Planning Permission enables Moselle Square to provide the focus for the new leisure destination, as envisaged by the NT5 allocation and the key requirements which inform that allocation.

11.4. Site allocation NT5 could have specified a minimum required quantum of leisure provision. It does not do so. The reference in para. 5.126 of the TAAP to "a new vibrant leisure destination for London" (which is to "build on" the THFC stadium redevelopment) does not connote any minimum quantum of leisure provision. In particular, the inclusion of the words "for London" simply reflects Tottenham's geographical location. The HRWMF similarly does not set down any minimum required quantum of leisure provision (the figures in Table 3.7.1 are illustrative / indicative only).

11.5. The Scheme, as authorised by the Planning Permission does indeed "fit in" with the "Site Requirements" (TAAP p. 104) to "[e]nhance the area as a destination through the creation of new leisure, sports and cultural uses that provide seven day a week activity" and to provide "a range of leisure uses that support 7 day a week activity and visitation". It should be noted that the policy documents support a broad understanding of the concept of "leisure": see e.g. section 3.1 of the HRWMF, which explains that "[p]eople will want to visit Moselle Square and High Road West because of its sport and leisure offer, which will build on the international sports identity established by Tottenham Hotspur Football Club and the provision of new facilities such as a cinema, fitness centre, bars and restaurants". The HRWMF also identifies[21] that Moselle Square will be "a thriving business area with

[20] CD3.6.
[21] At 1.3, p. 14.

shops, restaurants and cafes with new homes above" – Ms Camburn agreed that the Scheme would achieve that aim.

11.6. The parameter plans for the Consented Scheme[22] allow leisure uses to be brought forward at ground floor level in Plots B to G. The Development Specification for the Consented Scheme[23] requires a minimum of 2,150 sq m GEA of leisure provision and allows for a maximum of 8,000 sq m GEA of Class E(a)-(e) floorspace[24], together with a public house (*sui generis* 3,000 sq m GEA) and a cinema (*sui generis* 3,000 sq m GEA). Those figures do not include Moselle Square itself, which is to be a minimum of 3,500 sq m and will provide a range of benefits including leisure and social spaces and capacity for events, markets and other activities[25]. 26% of the floorspace at ground floor is proposed as leisure floorspace in the illustrative masterplan[26]. Consideration of the percentage of the Scheme's <u>total</u> floorspace that is proposed as leisure floorspace is inapposite: one would not expect significant leisure floorspace to be provided halfway up a residential block.

11.7. Mr Bashforth accepted that the Planning Permission allows a new leisure destination focused in and around Moselle Square to come forward. His concern was that "there are no guarantees that it will". However, THFC's concern that only the minimum quantum of leisure provision identified in the Development Specification will be brought forward and that such a level of provision will be inadequate was not shared by the Council (as local planning authority) in granting the Planning Permission. Having considered the range of floorspace proposed, the officer's report ("**OR**"[27]) for the Planning Permission advises at para. 4.22 that "[t]he overall quantum of community and leisure floorspace proposed is commensurate with the aspirations of enhancing the area as a destination through the creation of new leisure, sport and cultural uses and complementing existing centres in the local area and is considered to be acceptable". In other words, in that respect the development authorised by the Planning Permission fits in with the adopted Local Plan. The Order Lands provide the location in and around Moselle Square which is key to realising that aspiration. Leisure related activities in and around Moselle Square will indeed complement the THFC Stadium and provide the focus for a new leisure destination

[22] CD4.3.8.
[23] CD4.04. Zones 1 to 6.
[24] Horne proof (CD9.05) para. 4.19(iv) and (v).
[25] *Ibid.* para. 4.19(vi).
[26] CD11.21.
[27] CD4.09.

throughout the year. Whilst at para. 4.38 the OR goes on to identify that the proposal "does not wholly accord with all the key principles set out in the HRWMF", in relation to leisure the identified departure from the HRWMF is that the proposal does not "sit[e] new commercial and leisure buildings opposite the stadium to create a sports and leisure destination for North London". As Mr Horne notes in his proof[28] and as Mr Bashforth agreed, the departure relates to the proposed location of the leisure floorspace, not to its quantum. See para. 29.1 of the OR: "Whilst community buildings and commercial users are proposed to front Moselle Square they do not explicitly provide leisure space opposite the stadium to create a sport and leisure destination for north London…". Mr Horne is correct to observe that the departure is tempered by the fact that leisure floorspace could be delivered in any of Development Zones 2 to 6 (i.e. Plots B to G), with Development Zones 2 and 4 being closest to the THFC stadium[29]. In other words, the departure is limited to the fact that the Development does not exclusively make provision for leisure floorspace in Development Zones 2 and 4.

11.8. As Mr Horne explains[30], the departure in relation to the location of leisure floorspace is one of a small number of departures from the key principles of the HRWMF that are noted in the OR (at paras. 4.38 and 29.1). It is unsurprising that there should be a degree of departure from those key principles given that the HRWMF is nine years old. It is important to note that the conclusion of the OR was that the Development would conform with the HRWMF's key principles when taken as a whole (para. 4.38). It also advised that "[th]e Applicant has demonstrated that these departures are considered necessary to make efficient use of the site and secure the delivery of a range of public benefits including the provision of additional homes (including affordable, accessible and family housing)[31]. The housing crisis has significantly worsened since the HRWMF was adopted in 2014[32].

11.9. Mr Bashforth confirmed that he was not quarrelling with the planning officer's judgement that the departure from the key principles of the HRWMF in relation to the location of leisure floorspace was not fatal to the merits of the Development.

[28] CD9.05 para. 7.28.
[29] *Ibid.* para. 7.29.
[30] *Ibid.*
[31] CD4.09 para. 29.2.
[32] CD9.05 para. 7.30.

11.10. Indeed – as Mr Bashforth agreed - both the Council and THFC recognise that a measure of flexibility falls to be exercised in applying the key principles of the HRWMF as part of the planning policy framework. THFC's own Alternative Masterplan (discussed in more detail below) similarly departs from the HRWMF in a "locational" sense, in that it proposes to relocate the library to The Grange, as opposed to Plot E (which is the location proposed in the HRWMF[33]).

11.11. The Council also notes (i) that allegedly inadequate provision of leisure floorspace was never a ground of challenge in THFC's unsuccessful claim for judicial review of the Planning Permission; and (ii) that THFC itself is proposing to remove consented leisure uses from its development proposals for the land north of White Hart Lane (which also lies within the HRWMF area)[34].

11.12. Finally as regards the Scheme's leisure provision, it is common ground that the development plan does not require provision of a "multifunctional event space" (as proposed by THFC in its Alternative Masterplan). THFC also acknowledges that it did not consider provision of this element to be worthwhile until earlier this year[35]. Responding to the Inspector's questions, Mr Serra said that an alternative scheme "may or may not include" a multi-functional venue. It can hardly be contended that such a venue is a necessary pre-requisite to achieving the objectives of the TAAP as expressed through NT5 and its Key Requirements.

11.13. There is a confusion running through THFC's case on this first main issue. CK seeks to draw the distinction between the question for the Local Planning Authority in determining a planning application (section 38(6) of the Planning and Compulsory Purchase Act 2004) and the compelling case test which applies in determining whether a CPO merits confirmation. Of course the latter test applies to the overall judgment whether the CPO should be confirmed. But in addressing the First Main Issue, we are concerned with whether the purpose for which the Order Land is being acquired "fits in" with the adopted Local Plan for the area (see paragraph 106.1 of the CPO Guidance – CD5.1). That aligns closely with the question whether proposed development "accords" with the statutory development plan (section 38(6) of the PCPA). Where, as in the present case, the Local Planning Authority

[33] CD3.6 p. 111.
[34] CD9.05 paras. 7.32 and 7.33.
[35] Bashforth cross-examination.

has considered the performance of the development comprised in the Order Scheme and granted planning permission, on the basis that it broadly accords with the development plan, that is a powerful indicator that the purpose for which the land is being acquired "fits in" with the adopted Local Plan. Particularly so, when the planning officer has drawn the clear conclusion that the development which it is the purpose of the CPO to facilitate fulfils that element of development plan policy (i.e. as to the creation of a leisure destination for London) which is raised by objectors.

11.14. In our submission, the Inspector is able confidently to conclude, in agreement with the LPA, that the purpose for which the Order Lands are proposed to be acquired is one which fits in with the principal elements of the adopted Local Plan, in particular, NT5 of the TAAP.

The Scheme's contribution to the economic, social and environmental well-being of the area[36] **- Main Issue 2**

12. Mr O'Brien explains in sections 3 and 9 of his proof[37] how delivery of the Scheme (as Phase A of the larger Regeneration Scheme) is demonstrably needed to meet long-standing social and economic challenges in North Tottenham. The following points from that evidence bear particular emphasis.

13. Tottenham is an area rich in potential with significant geographical, historical and cultural strength. Its extraordinarily diverse population possess a strong shared sense of pride and belonging. However, in recent decades many local residents have faced significant barriers including high levels of deprivation, an under provision of good quality and affordable housing, a lack of access to training and employment opportunities, perpetually high levels of both serious and low-level crime and a poor quality of health. Those challenges are particularly pronounced in North Tottenham, which has consistently ranked as one of the most deprived areas of the country. In particular:

13.1. As with London more broadly, there is a chronic shortage of housing in Haringey, particularly affordable housing, which has worsened over the past decade. In April 2013,

[36] 2019 Guidance (CD5.01) paras. 103 and 106 (second bullet point).
[37] CD9.01.

Haringey had 9,800 households waiting for social housing on the housing register. As of September 2023, this figure had increased to over 13,000. Of these, just over 2,800 households are homeless and 2,586 living in temporary accommodation. The shortage of affordable housing has been exacerbated by the loss of the existing Council stock. The number of Council homes in Haringey has decreased by over 1,000 since 2013, as a result of the Right to Buy scheme.

13.2. Overcrowding is also a significant issue: the Tottenham constituency has the third highest levels of overcrowding in the UK and between 2013 and 2022, the number of households waiting for social housing in Haringey who were living in overcrowded or insanitary accommodation increased from 5,893 to 7,592.

13.3. Haringey is the fourth most deprived borough in London. The gap in healthy life expectancy between the richest and poorest areas within Haringey is 15 years for men and 17 years for women. Tottenham (in the east of Haringey) experiences some of the highest deprivation levels in the UK. A child in North Tottenham is approximately 60% more likely to be living in poverty than the borough average.

13.4. More than a quarter of residents (28.3%) in North Tottenham have no academic or professional qualifications, significantly higher than the average in Haringey (18.5%) and London (16.2%).

13.5. Businesses are crucial to economic prosperity in Haringey and are an important provider of local employment. However, Haringey's business base is characterised by SMEs, with the number of VAT/PAYE enterprises employing less than 250 employees accounting for over 99% of businesses in the borough. SMEs can be more susceptible to changing trends and economic shocks.

13.6. As regards crime and the perception of safety, Haringey is one of the ten worst boroughs for serious youth violence in England. The rates of crime in North Tottenham are also particularly high. Between March 2022 and February 2023, the average number of anti-social behaviour incidents in the local area per month was more than double the borough average. Similarly, the average number of crimes per month (311) over the same period was significantly higher than the borough average (190). Residents in North Tottenham

are more likely to feel unsafe both during the day and after dark in comparison to residents elsewhere in Haringey. In a 2021 survey 62% of residents in North Tottenham referenced crime and anti-social behaviour as the aspect they disliked most about their local area.

14. The substantial issues of deprivation identified by Mr O'Brien in his evidence have a significant impact on the day-to-day lives of North Tottenham's residents. The inception of the Regeneration Scheme occurred as far back as 2012, as a means to deliver meaningful and long-lasting change for those residents and also for businesses in North Tottenham. The need for the Regeneration Scheme was substantial in 2012: it is even more so today. Despite the Council's best efforts to address the issues present in North Tottenham, its economy has been significantly impacted by the economic shocks resulting from matters such as Brexit, the Covid-19 pandemic, the war in Ukraine and the cost of living crisis. None of the objectors to the Order questions the Council's evidence on the significant challenges that the area faces.

15. The Council's policy and strategic response to these challenges has been rooted in a sustained process of public consultation and community engagement. Mr O'Brien sets out the history in section 4 of his proof of evidence. His evidence on that topic is essential to the Council's case. The consultation which informed the preparation of the HRWMPF in 2013 and 2014, and the more recent consultation and ballot of residents on the Love Lane Estate, show clear community support for the regeneration of HRW through a residential led, mixed use scheme. Both the Council and LL are committed to delivery of the Scheme in response to that longstanding community support. Mr Serra was correct to emphasise the urgency of delivering on that long standing commitment, which finds expression not only in the HRWMPF and the TAAP, but also in the Development Agreement and the Planning Permission. The time has come to get on. That urgent need to deliver on long standing policy commitments which enjoy clear community support is central to the compelling case for confirmation of the CPO.

16. We turn to the highly significant contribution that the Scheme will make to the economic, social and environmental well-being of the area, in response to those challenges. These benefits are evidenced by Mr O'Brien in section 9 of his main proof.

<u>Contribution to economic well-being</u>

17. On the basis of the illustrative masterplan submitted in support of the planning application for the Planning Permission, the Scheme will directly and indirectly benefit the economic well-being of the residents of Tottenham and the borough through the creation of a substantial number of jobs and employment opportunities, during both the construction and operational phases of the Scheme. This includes:

    17.1. Creating an average of 422 direct FTE jobs in construction during each year of the demolition and construction phase of the Scheme;

    17.2. Supporting a further 418 FTE jobs across a range of sectors and services (through indirect / supply change and wider induced effects) during each year of that phase;

    17.3. Generating £43,300,000 direct Gross Value Added ("**GVA**") and £49,800,000 indirect and induced GVA per annum from the construction phase of the Scheme;

    17.4. Generating a net additional annual expenditure of £12,600,000, which will support 89 FTE net additional jobs in retail, leisure, hospitality, catering and other services once the non-residential space within the Scheme is fully open and trading;

    17.5. Generating 'first occupation' expenditure of £8,100,000 over a ten-year period following occupation of the first homes within the Scheme, a high proportion of which spend would be captured locally; and

    17.6. Delivering £2,500,000 in (gross) council tax receipts and around £413,200 of (gross) business rates revenue each year for the Council in perpetuity.

18. Turning to local training and employment benefits, the Section 106 Agreement requires Lendlease to provide work experience placements; to procure that not less than 20% of the construction workforce are residents of the borough; to provide skills-based training to all such residents; to offer apprenticeships (c. 85 are anticipated); and to provide work placements for unemployed residents of the borough.

19. The above economic benefits will be further enhanced through the delivery of the new Library and Learning Centre, which will provide a facility to promote training and education opportunities

for residents, supporting them into new jobs and further education. This facility will particularly benefit residents who are "not in education, employment and training" ("**NEETs**") and jobseekers.

20. Above and beyond the obligations within the Section 106 Agreement, the DA commits Lendlease to £10,000,000 of social and economic investment into North Tottenham over the lifespan of the Regeneration Scheme.

Contribution to social well-being

21. The delivery of approximately 1,350 to 1,665 new homes, of which 40% will be affordable (by habitable room) - including 500 social rented Council homes – represents the largest contribution of any project to the Council's ambitious home building programme. It will provide a huge boost to the Council's objective of delivering a new era of Council homes for local people.

22. Through the provision of replacement homes residents' standard of living conditions will be enhanced considerably, as the new homes will be built to standards better suited to modern life. The Scheme will deliver new private amenity space alongside the new homes, which will encourage social interaction and play for children, and provide the benefits of green space to residents.

23. The Scheme will also provide important community infrastructure. That provision includes the Library and Learning Centre, which could accommodate services including:

    23.1. Creative Enterprise and Business Hub support spaces and a Job Club;

    23.2. Adult Learning facilities, ranging from ESOL to creative skills and wellbeing, together with significant quiet study space;

    23.3. Flexible spaces for community meetings and the arts; opening on to Moselle Square;

    23.4. Space for a café and a showcase gallery animating the public realm;

    23.5. An expanded children's library, with the ability to host a programme of events; and

23.6. Support services including support for young people and delivery and signposting of services critical to the local community.

24. The Scheme's community infrastructure also includes Moselle Square, which will be designed to provide a mix of year-round activities that reflect community aspirations. It will provide the capacity and infrastructure for events such as concerts, plays and open air cinema; play space, water features, markets; growing spaces; and outdoor seating and socialising space both separate and linked to the food and beverage offer. The square will also provide a more spacious and appropriate access to and from the Station and the THFC stadium.

25. The new homes and public spaces will be designed with Secured by Design principles in mind and in consultation with the community and local stakeholders, to promote a safer neighbourhood. The approach to promoting a safer environment through the delivery of the Scheme is discussed further in Mr Lawrence's proof[38].

Contribution to environmental well-being

26. The Scheme has been designed to enhance the environmental well-being of its residents, occupiers and visitors. It also seeks to deliver on the Council's wider objective of responding to the challenges presented by a changing climate, by supporting the promotion of more sustainable modes of transport and the creation of greener neighbourhoods.

27. The Scheme's buildings and spaces will be built to modern standards, providing well insulated, warm and energy efficient spaces that minimise the energy used by their occupiers. The Scheme's new homes will be built to connect to the Council's District Energy Network, which once operational will ensure that homes are provided with low carbon, sustainable energy.

28. The Order Land links the High Road with the Station. It will improve connectivity in this area through the provision of safe and accessible walking and cycling routes. This will promote active travel, reduce vehicle use and help improve people's health and wellbeing. The Scheme would also provide opportunities for employment close to home for residents, reducing transport use and encouraging active travel.

[38] CD9.03.

29. The Scheme will result in a net reduction of car parking spaces, while providing electric vehicle charging points to support the shift away from petrol and diesel-based vehicles.

30. Finally, the Scheme's landscaping and public realm is designed as green and healthy streets. Delivery of the new public realm will result in significant biodiversity enhancements.

31. Taken together, it is clear that acquisition of the Order Land for the purpose of facilitating its redevelopment in accordance with the Planning Permission will contribute to achieving extensive and much needed improvements of the economic, social and environmental wellbeing of the area. Promoting those improvements is a longstanding strategic objective of the Council, which enjoys clear community support and finds clear expression in the planning framework within which the Scheme is being promoted through this CPO. Finally, we draw attention to [27] of the judgment of Saini J (CD5.17). The Judge was plainly impressed by the clear development plan support for the development authorised by the Planning Permission – he described the regenerative impacts of the development as being of overwhelming significance in the planning balance. The CPO if confirmed will enable delivery of Phase A of that development.

Potential alternatives – Main Issue 3

32. The evidence establishes that the purpose for which the Council is proposing to acquire the Order Land could not be achieved by any other means[39] (i.e. without compulsory purchase of that land). Three alternative proposals have been identified by objectors to the Order: one by the Tryfonos Family, another by Ms Powell and the third by THFC. We consider each in turn.

Omission of the Tryfonos Properties

33. Contrary to the Tryfonos Family's contentions, there is both a clear requirement and a compelling case in the public interest for the inclusion of their properties ("**the Tryfonos Properties**") within the Order Land. The Council notes at the outset of its analysis of this point that THFC's Alternative Masterplan similarly includes the Tryfonos Properties.

34. The Tryfonos Family complains[40] that the Council "has never consulted on an alternative in which the Tryfonos Properties would be retained". As Mr Lawrence explains, the Council gave comprehensive consideration to whether the properties could be retained, in the course of

[39] See para. 106 of the 2019 Guidance (CD5.01), third bullet point.
[40] CD11.06 para. 4.

producing the HRWMF[41]. Moreover, Mr Tryfonos acknowledged that he (and others) had responded to consultations prior to the approval of the HRWMF expressing the view that the High Road properties (including the Tryfonos Properties) should be retained: his evidence[42] was that he had "absolutely" made clear to the Council that they should not follow a course that involved demolition of those properties. He agreed that the Council had been aware of the strength of feeling of Mr Tryfonos and his fellow traders that the Council's proposals were wrong.

35. Acquisition of the Tryfonos Properties is required in order to deliver the objectives of both site allocation NT5 and of the HRWMF. As Mr Horne[43] and Mr Lawrence explain in their evidence, for both planning policy and compelling urban design / placemaking and townscape reasons, the successful fulfilment of the objectives of the TAAP and the HRWMF depends upon the acquisition of those properties. In more detail:

    35.1. Mr Horne sets out[44] the land uses and the minimum/maximum quantum of floorspace that must/can come forward on Plot E in the Consented Scheme. As he explains[45], the policy context for requiring the inclusion of the High Road properties (including the Tryfonos Properties) in the Scheme is very clear. In particular, the HRWMF explicitly identifies Plot E as the location for the Library and Learning Centre. 79% of respondents to the 2014 consultation on the HRWMF agreed with the principle that there should be a community hub (with library, learning, community and business space) and that it should be built on the High Road and in the new public square so as to be accessible for all[46]. There is no suggestion from the Tryfonos Family that it would be appropriate to retain their properties and "push" Plot E further back (west from the High Road) into Moselle Square.

    35.2. The compelling case for the acquisition of the Tryfonos Properties from an urban design / placemaking and townscape perspective is set out in considerable detail by Mr Lawrence at paras. 9.4 to 9.11 and 9.13.1 of his proof[47]. The Council relies upon in full – but does not repeat – that section of Mr Lawrence's evidence and respectfully invites the Inspector to

[41] CD9.07 para. 9.4.3; CD11.10 p. 16; and Appendix B to the HRWMF (CD3.6).
[42] Cross-examination.
[43] Paras. 7.60 to 7.75 of his proof (CD9.05).
[44] CD9.05 paras. 7.60 to 7.63.
[45] *Ibid.* para. 7.69 ff.
[46] *Ibid.* para. 7.68.
[47] CD9.07.

give careful consideration to it. The Council notes in particular the following points from the summary provided by Mr Lawrence at his para. 9.13.1:

35.2.1. Benefits to replacing the High Road properties include the vibrant activation of the High Road to enhance and expand the local centre, delivering a mix of ground floor-activating commercial and community-focused uses.

35.2.2. The redevelopment of the High Road properties complements the scale and architectural character of the THFC stadium, enhancing the placemaking quality of this section of the High Road.

35.2.3. The redevelopment of the High Road properties enables the delivery of a wider range of larger, fit-for-purpose retail and food and beverage units befitting the significance of the local centre, allowing the Scheme to optimise both site capacity and design quality, offering the greatest possible environmental, social and economic benefits to the area.

35.2.4. The layout that can be provided if the High Road properties are removed is open, inviting and inclusive, with highly considered physical and visual connections.

35.2.5. Secured by Design requirements can only be fully met by replacing the High Road properties with generous, safe, and pedestrian-first public realm, together with perimeter buildings that offer clearly defined public and private spaces, natural surveillance and activation of the streetscape. (Mr O'Brien's evidence[48] was that retention of the Tryfonos Properties would be "highly problematic" from the perspective of addressing crime, with specific reference to the relationship between the existing rear of those properties and Moselle Square – we return to that relationship below.)

35.2.6. Removal of the High Road properties is essential to creating connectivity between the THFC stadium, the High Road and Moselle Square, ensuring the vitality of the public space and surrounding uses.

[48] Response to Inspector's question.

35.2.7. Retention of the High Road properties would remove the ability of the Scheme to meet its exemplar placemaking ambitions and Healthy Streets agenda.

35.2.8. Retention of the High Road properties would result in the provision of fewer high-quality homes to the area.

35.2.9. Refurbishment of the existing High Road properties would do little to improve the townscape character of the High Road, leaving in place the existing disjointed juxtaposition with the THFC stadium opposite.

36. Mr Lawrence is right to identify that retention of the High Road properties (including the Tryfonos Properties) would result in a missed opportunity for transformative change to the High Road[49]. Furthermore, his unchallenged evidence was that taking Plot E out from the Scheme but carrying on with the rest of it was "not a solution": the Scheme is a complicated one with competing requirements from a design perspective. Retention of the Tryfonos Properties would undermine the importance both of Moselle Square and of the Scheme as a whole.

37. Turning to the points raised by the Tryfonos Family in oral evidence:

37.1. If Plot E is built out to the maximum parameters permitted by the Planning Permission, the Tryfonos Properties will fall within Plot E (and not within the east-west route from the High Road through Moselle Square: "**the E-W Route**"[50]). If Plot E is delivered as a smaller plot it is possible that the Tryfonos Properties will fall partly within Plot E and partly within the E-W Route. It matters not which outcome ultimately eventuates: both Plot E and the E-W Route are vital elements of the Scheme, required by the HRWMF.

37.2. As Mr Lawrence explained[51], the existing rear of the Tryfonos Properties is very poor quality and if those properties were retained, would provide a very poor frontage to and relationship with Moselle Square. In contrast, the properties that <u>are</u> proposed to be retained in the north-eastern corner of Moselle Square occupy a less important location and have sufficient form to "hold" the square (in that less important location). It is desirable for public spaces such as the square to be adequately enclosed rather than "leaky":

[49] CD9.07 para. 9.5.6.
[50] CD11.09 and evidence-in-chief of Mr Lawrence.
[51] Evidence-in-chief.

retention of the Tryfonos Properties would respond badly to that aim and less successfully than if Plot E were built out.

37.3. Whilst it was suggested on behalf of the Tryfonos Family that the relationship between the rear of their properties and Moselle Square could be improved (e.g. through landscaping or a "small community garden"), Mr Lawrence's professional view was that the position would only be marginally and not fundamentally changed by such mitigation and would remain particularly problematic at night; the sense of ownership at the eastern end of the square would still be undermined.

37.4. Furthermore, if the Tryfonos Properties were retained Moselle Square would be less well overlooked. There was no challenge to Mr Lawrence's evidence that principles of good design require good, active frontages to be provided on all sides of the square. The suggestion that active frontages could be created through provision of umbrellas and outdoor seating within Moselle Square was misconceived: that would create "activity" but not the "active frontages" that are required by principles of good design (the latter relate particularly to building form).

37.5. On the E-W Route: existing east-west connections (not including White Hart Lane) are, as Mr O'Brien and Mr Lawrence correctly observed, sub-standard, inadequate and unsafe. Mr Lawrence's view was that they would not be adequate to support the regeneration of High Road West. The E-W Route is firmly grounded in both the TAAP and the HRWMF, as Mr Lawrence explained. Its proposed location has been identified not only by Mr Lawrence's firm (Studio Egret West) but also by numerous other designers, including those responsible for the HRWMF. It should also be noted that even if ultimately the Tryfonos Properties fall within Plot E (rather than within the footprint of the E-W Route), retaining those properties would reduce the amount of active frontage along the route as it leaves the High Road.

38. The Tryfonos Family contends that there is "no freestanding obligation imposed on Lendlease to deliver either Moselle Square or the LLC [Library and Learning Centre]"[52]. That contention is incorrect for the reasons given on behalf of the Council in Pinsent Mason's letter of 14 November 2023[53]. In particular:

[52] CD11.06 para. 12.
[53] CD11.19

38.1. The "Core Requirements" of the DA[54] include "(vi) a new 1,400 sq m library GIA and learning centre (including fit out)" and "(vii) improvements to the landscape and public realm including a major new link between an enhanced White Hart Lane Station and THFC". Moselle Square plainly falls within the category of "public realm improvements" and will include part of the "major new link" between the Station and THFC's stadium.

38.2. The "Project Objectives" of the DA (pages 1 and 31) explicitly include the Library and Learning Centre (objective (v)) and delivery of "a new high quality public square, which is activated with community and other uses, to link White Hart Lane station to the High Road" (objective (viii)). When read together, Clause 26 of and paragraphs 1.1 to 1.5 of Part 2 of Schedule 3 to the DA require LL to carry out and complete the development permitted pursuant to the Planning Permission, in accordance with its conditions and the planning obligations contained in the section 106 agreement (CD4.28/4.29). The DA is explicit in requiring LL to have entered into a building contract for construction of the Library and Learning Centre in Plot E prior to it being able to commence Plot F (see the Milestone Condition at page 20 of the DA).

38.3. The DA in effect requires that the application for planning permission for the High Road West regeneration must be in accordance (*inter alia*) with both the Core Requirements and the Project Objectives: cl. 6.3.4. The DA also entitles the Council to withhold or delay its approval to the Delivery Methodology if it is not in accordance with both the Core Requirements and the Project Objectives: cl. 17.3. Additionally, any "Mitigation Plan" setting out alternative proposals for mitigating a "Mitigation Matter" must still deliver the Core Requirements[55].

38.4. The Section 106 Agreement[56] requires Lendlease to provide Moselle Square ("the Moselle Square Open Space") prior to the occupation of 90% of the open market housing units in Phase A or prior to occupation of 780 open market housing units (whichever is earlier): Sch. 13, paras. 2.3 and 2.4. The public must thereafter be provided with free and unrestricted access (in accordance with the terms of the management plan): Sch. 13 para. 2.5.

[54] CD5.16.
[55] See the DA definition of "Mitigation Plan".
[56] CD4.29.

38.5. As varied by the deed of variation dated 16 November 2023[57], the Section 106 Agreement requires Lendlease to provide and practically complete the Library and Learning Centre prior to the occupation of more than 95% of the open market housing units in Phase A (Sch. 14, paras. 5.2 and 5.3 as varied). The Council must also be granted the right to occupy the Library and Learning Centre prior to that point.

38.6. As Ms Mason explained[58], Lendlease has in fact made changes to the delivery programme for the Scheme so as to bring forward delivery of the Scheme's social infrastructure (including Moselle Square and the Library and Learning Centre) and thus enable the Scheme to become established as a "place" prior to the provision of market housing. See para. 8.4(b) of her proof[59] and the associated table.

38.7. In summary, the position is as follows –

(a) The Planning Permission provides for Moselle Square and the LLC.
(b) The Section 106 Agreement (as varied) requires the delivery of Moselle Square and the LLC.
(c) The DA requires the development to be delivered in accordance with the Planning Permission and Section 106 Agreement. It also requires delivery of the "Council Facilities" which includes the LLC.
(d) The Planning Permission, Section 106 Agreement and Development Agreement set minimum requirements for Moselle Square and the LLC. In the case of the LLC these exceed the minimum requirements in the Planning Permission.
(e) The Development Agreement requires the delivery of the LLC within Plot E.

39. In their opening statement[60] the Tryfonos Family argue that "[t]he Acquiring Authority will need to demonstrate why the Tryfonos Properties need to be acquired at this and not some later time – on the basis of compelling reasons in the public interest and not merely by reference to the convenience or preferences of its development partner, Lendlease". The Council has satisfied that requirement. It notes that the 2019 Guidance is only partially quoted on behalf of the Tryfonos Family: the full sentence from para. 13 of the 2019 Guidance[61] provides that "<u>It is not essential to</u>

[57] CD11.33.
[58] Evidence-in-chief.
[59] CD9.03.
[60] CD11.06 paras. 10 and 11.
[61] CD5.01.

show that land is required immediately to secure the purpose for which it is to be acquired, but a confirming minister will need to understand, and the acquiring authority must be able to demonstrate, that there are sufficiently compelling reasons for the powers to be sought at this time" (emphasis added).

40. Delivery of estate renewal and regeneration of the Order Land in fulfilment of the Council's strategic and planning policy objectives is a longstanding commitment of both the Council and Lendlease, which now needs to be taken forward through implementation of the Planning Permission to the south of White Hart Lane. It is simply unrealistic to argue that the process of land assembly for that purpose should continue to be attempted in the highly piecemeal and uncertain fashion implied by this part of the Objectors' case. Urgent action is now needed. The Council and Lendlease have devised a phasing strategy that reflects a realistic delivery programme for the Scheme and that prioritises the delivery of new homes, notably affordable homes, and specifically replacement homes for Love Lane Estate residents[62]. Works to Plot A have commenced and remain on target to deliver that plot in accordance with the current delivery programme[63]. Once the Order is confirmed, Lendlease will enter the delivery phase of Plots B to G[64]. The Tryfonos Properties are required in accordance with the current phasing programme so that regeneration south of White Hart Lane can be delivered both effectively and promptly. There is a particular need to complete land assembly of the High Road frontage properties between 731-759 High Road, to provide confidence and certainty that the key place-making elements of the Scheme (Moselle Square, the LLC and the new route between Station and Stadium) will be delivered in accordance with the phasing programme.

Ms Powell's suggested alternative

41. Ms Powell suggests that five[65] of the blocks to the south of Whitehall Street ("**the Southern Blocks**") – including the block in which her property (63 Whitehall Street) is located – could be retained "without interfering with the "regeneration" agenda for the area"[66]. Her alternative proposal is that the Southern Blocks "could continue to form a separate small estate especially if grouped with additional low-rise blocks nearby which are not listed for demolition, including those

[62] Mason proof (CD9.03) para. 8.1.
[63] *Ibid.* para. 2.10(f) and (h).
[64] *Ibid.* para. 8.1.
[65] CD9.29 para. 1.3: 3-29 Whitehall Street (odds), 31-61 Whitehall Street (odds), 63-89 Whitehall Street (odds), 2-28 Orchard Place, 4-18 Brereton Road.
[66] *Ibid.* para. 2.1.

in Church Road and James Place as well as Williams House and Rees House"[67]. Mr Sherbanov similarly argues that the block in which the property in which he resides (85 Whitehall Street) is located could be retained.

42. Mr Horne's unchallenged evidence[68] is that retaining the Southern Blocks would result in a shortfall of residential floorspace within the Scheme in the order of 35,000 sq m, which would make it "very challenging indeed" to deliver the same or a similar number of residential units as are proposed for the Scheme at present. His professional view is that a policy conflict with both the TAAP and the HRWMF would arise, as retaining the Southern Blocks would prevent the delivery of many of the benefits required by those policy documents (namely the comprehensive redevelopment of site allocation NT5, a new residential neighbourhood, replacement social homes, new social homes and new market housing). Mr O'Brien drew attention in his main proof to the clear community support for comprehensive renewal of the Love Lane Estate in response to consultation on the draft HRWMPF in 2013 and 2014 (Option 3). Both the HRWMPF and the TAAP are founded on that proposition. To exclude the Southern Blocks from the Order Land would prevent that established and locally supported policy objective from being realised.

43. The design rationale for the removal of the Southern Blocks is similarly grounded in the adopted planning framework for the Order Land[69]. In particular, consideration was given to retaining the Southern Blocks in the course of producing the HRWMF (see Option 2 on p. 35 of the HRWMF[70]) but ultimately the HRWMF requires their removal.

44. Retention of the Southern Blocks would also be inappropriate for the following reasons identified by Mr Lawrence[71]:

    44.1. It would remove the opportunity to deliver a new connection from Brereton Road through to Moselle Square. Mr Lawrence identifies that connection as "an important new connection" that improves the Scheme's permeability, "encouraging an ease of movement through the Order Land, and connecting the heart of the Scheme to neighbouring communities".

[67] *Ibid.* para. 2.2.
[68] CD9.05 paras. 7.78 and 7.79.
[69] Lawrence proof (CD9.07) para. 9.12.1.
[70] Option 3 – which provided for the most comprehensive redevelopment of the Love Lane Estate – was favoured both by Love Lane Estate residents and residents in the wider community: O'Brien proof (CD9.01) para. 4.16.
[71] Proof (CD9.07) sections 9.12 and 9.13.2.

44.2. Despite potential improvement works, the retention of the Southern Blocks would present an inactive and defensive frontage on to Moselle Square. The disjointed alignment and poor design quality of the blocks would conflict with the design ambitions for and desired activation and framing of the Scheme's primary piece of public realm. Exposing ground floor homes to an environment as public as Moselle Square would also significantly conflict with Secured by Design principles.

44.3. Retention of the Southern Blocks would do little to improve the quality of the streetscape along Brereton Road and Orchard Place, which would continue to be poorly activated and overlooked. Despite opportunities for landscape and public realm improvements, the Southern Blocks would continue to form a closed and defensive block structure that would be perceptually detached from the rest of the Scheme. They would sit in stark contrast to the level of design and placemaking quality of the latter.

<u>The THFC Alternative Masterplan</u>

45. THFC's "Alternative Masterplan" comes nowhere near establishing that the purposes for which the Council is proposing to acquire the Order Land could be achieved by other means. It does not avoid the need to take powers of compulsory purchase and should be given no weight for that reason alone. The THFC interests within the Order Land are limited to a small number of reversionary freehold interests in High Road Frontage properties owned by Canvax Ltd. Mr Serra was unable to give any details of the factual position in relation to existing rights of tenure and occupation of those properties. That is a distinctly unpromising position from which to raise the argument that THFC is in a realistic position to bring forward an alternative means of delivering the purposes for which the Council seeks confirmation of the CPO. Mr Serra accepted and indeed asserted the need for urgent action to deliver. Yet THFC's alternative plan is highly inchoate and offers no realistic prospect of delivery on a similar, let alone an accelerated, timescale to the Scheme:

45.1. Although Ms Camburn's evidence was that she has been working on the alternative masterplan since 2019, the only documented evidence of the progress that has been made is CD7.03[72].

[72] Camburn cross-examination.

45.2. The alternative masterplan does not succeed in accommodating the Scheme within the Order Land. As Ms Camburn accepted, it requires the library to be relocated to The Grange (north of White Hart Lane and outside of the Order Land) and its decant strategy also requires Love Lane Estate residents to be rehoused within the Goods Yard site (also outside of the Order Land)[73].

45.3. The alternative masterplan is less successful than the Scheme in design and placemaking terms, as explained by Mr Lawrence[74]. In particular, figure 3 within Ms Camburn's rebuttal[75] serves only to support Mr Lawrence's observation that the alternative masterplan's proposals for Plot C (the multifunctional event space) perform less well than those shown in the illustrative masterplan for the Consented Scheme.

45.4. Ms Camburn prepared the alternative masterplan in ignorance of timescales for planning[76]. It is common ground[77] that the alternative masterplan may require a fresh application for and grant of planning permission: further studies and discussion with the Council (as local planning authority) would be required. There has not yet been any such discussion[78]. Mr Serra was unable to offer any explanation as to why THFC had failed to approach the local planning authority. Ms Camburn recognised that that process would take time and that implementing the alternative masterplan would require EIA (including heritage assessment), community engagement and statutory consultation. It is of course possible that objections would be made to the alternative masterplan by parties who did not object to the Consented Scheme. Mr Serra confirmed that THFC have not engaged with individual residents of the LLE. The very limited engagement activity described by Mr Serra in section 7 of his proof has not in fact advanced since early October. This against the background of an alternative masterplan on which Arup and others apparently have been working since 2019.

45.5. Delivery of the THFC alternative masterplan would require compulsory purchase powers to be exercised. Both Ms Camburn and Mr Serra accepted that fact. THFC owns only a small fraction of the land that would be required. 80% of it is owned by the Council. It is

[73] CD7.03, p. 11.
[74] CD9.07 section 10 and oral evidence.
[75] CD10.12.
[76] Camburn cross-examination.
[77] *Ibid.*
[78] *Ibid.*

common ground[79] that it would also be necessary to acquire the properties of Ms Powell, Mr Sherbanov, the Tryfonos family, Mr Dellal and the health centre. Nothing suggests that those parties – who have objected to the Order – would not object to a CPO in relation to the alternative masterplan. Mr Bashforth accepted that if the Council is correct to contend that it would be necessary to exercise compulsory purchase powers in order to deliver the THFC alternative masterplan, that consideration attracts significant weight in the analysis.

45.6. The commercial aspects of delivering the alternative masterplan would also need to be addressed, as Ms Camburn accepted. The alternative masterplan is unsupported by any viability assessment work[80]. There is no documentary evidence before the inquiry to support the very limited evidence of commercial interest which Mr Serra speaks of in section 7 of his proof.

45.7. The contrast between the alternative masterplan and the CPO Scheme is stark. The CPO Scheme is authorised by the Planning Permission and the DA is in place. A building contract is at the point of being let for the first Phase. The Planning Permission has been implemented. Very substantial public funding has been secured. The CPO Scheme's viability has been appraised as positive by Mr Levine on a market facing basis (and Mr Levine's work has been reviewed by BNP Paribas and Mr Cottage, both of whom find that the CPO Scheme produces a positive return on investment). The Order has been made and is now at confirmation stage. Ms Camburn was right to acknowledge that the Scheme is comparatively more advanced than the alternative masterplan. Her view was that there was an urgency to "doing the right thing and regenerating the area". That urgency would obviously not be addressed by THFC's proposal that the Scheme be put to one side in favour of the alternative masterplan.

45.8. Mr Serra gave additional oral evidence in EiC about asserted progress with THFC's alternative approach. He offered no explanation as to why that additional evidence had not been included in his proof of evidence in accordance with the usual procedural rules. His written evidence in paragraphs 7.2 and 7.3 of his proof of evidence had offered very little insight into THFC's alternative proposals. Mr Serra also mentioned discussions with the Council and Lendlease which, again, were not addressed in his main proof and had

[79] Bashforth cross-examination.
[80] Cottage cross-examination.

not been raised with the AA's witnesses. It is the AA's position that such discussions have been undertaken without prejudice. We submit that the Inspector should give no weight to this additional evidence. The established position in evidence before the inquiry is that the alternative masterplan is at the earliest stage of development, inchoate, undefined, would require the promotion of compulsory purchase powers, is put forward by an objector whose landholdings within the Order Land are very limited in extent and who enjoys no obvious prospect of being able to take forward an alternative scheme for redevelopment of the Order Land in the event that the CPO is not confirmed. THFC's alternative masterplan is simply not a realistic or credible alternative means of achieving the purpose for which the Council is proposing to acquire the Order Land.

Scheme viability – Main Issue 4

46. Para. 106 of the 2019 Guidance[81] advises that "[a] general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed". It is common ground[82] that the question for the Inspector in relation to viability is whether there is a reasonable prospect of the CPO Scheme proceeding.

47. The evidence of the Council and Lendlease demonstrates that there is at least a reasonable prospect of the CPO Scheme proceeding. Indeed, we invite the Inspector to conclude that both the Council and Lendlease have proven their longstanding and continuing commitment to delivery of the development comprised in the CPO Scheme which forms the first main phase of the overall redevelopment of HRW authorised by the Planning Permission.

48. First, agreement has been reached between the Council and the GLA for £91,512,000 in the form of Affordable Housing Grant (£70,312,000) and Mayor's Land Fund (£21,200,000) – see paras. 10.21 to 10.23 of Mr O'Brien's proof[83]. When the grant funding is considered together with the agreed affordable housing purchase prices, there is approximately £190 million of secured funding for the Scheme[84].

[81] CD5.01, fourth bullet point.
[82] Cottage cross-examination.
[83] CD9.01.
[84] Mason rebuttal (CD10.3) para. 3.19.

49. Secondly, Lendlease's evidence is that later phases of the Scheme will be funded by a combination of pre-sales, third party investment, revenue generated by sales from earlier phases, Lendlease Limited equity and potentially public sector partners[85]. Lendlease is plainly in a position to deliver the requisite funding. Lendlease has a strong track record of raising funding from investment partners[86]; it is common ground[87] that the estimated end value of its global "pipeline" is very substantial (AUS$108.1 billion[88]). The parent company stands as guarantor under the DA. As Mr Cottage acknowledged, Lendlease is a major and very well established player in the field of delivering major urban projects and knows how best to fund the Scheme. It is also common ground[89] that Lendlease's standing in the market and strong track record are material to the application of the 2019 Guidance: Mr Cottage agreed that potential investors would take into account those considerations alongside financial viability appraisals. Ms Mason's evidence provides details in clear support of Lendlease's credentials on these matters.

50. Mr Levine has produced a market-facing financial viability appraisal ("**FVA**") of the Consented Scheme[90] that demonstrates a positive rate of return that is in line with Lendlease's current market expectations. The IRR identified by Mr Levine is now 10.43%[91], revised from an IRR of 11.59% previously identified when he produced his proof[92]. In paragraph 7.3 of her main proof, Ms Mason said that the projected returns produced by Mr Levine's market facing appraisals in his proof were broadly in line with the typical risk adjusted returns that Lendlease would expect from an urban regeneration project such as the Scheme (and the Regeneration Scheme). Mr Levine said that his revised results remained within the range which he considered acceptable for a regeneration project of this kind.

51. The IRR of 10.43% identified by Mr Levine is robust. It is common ground that the Consented Scheme makes a positive return.[93] There remain two points of dispute between Mr Levine and Mr Cottage on the (revised) FVA, namely (i) the date at which an assumption of sales value growth should be applied; and (ii) the inflation rate to be applied to building construction costs[94]. On the

[85] Para. 6.23 of Ms Mason's proof (CD9.3) provides additional detail.
[86] CD9.3, section 4.
[87] Cottage cross-examination.
[88] CD11.22.
[89] Cottage cross-examination.
[90] Revised FVA at Appendix B to CD11.17.
[91] *Ibid.*
[92] CD9.12.
[93] Cottage response to Inspector's question.
[94] CD11.17, para. 2.

first point, it is agreed that 5.25% is the appropriate growth premium *per* annum; the disagreement between Mr Levine and Mr Cottage is whether that figure should be applied from the outset of the assumed development period (Mr Levine) or from January 2025 (Mr Cottage). Mr Levine's approach should be preferred. It is internally consistent. It is supported by BNP Paribas, who state clearly "we consider an average growth rate of 5.25 per cent over the lifetime of the Consented Scheme and Development scheme to be reasonable"[95]. The reference to "the lifetime of the Consented Scheme and Development scheme" clearly relates to the entire lifetime of the Scheme and not to the period from January 2025 onwards. Additionally, Mr Cottage's own evidence[96] suggests that Haringey is performing rather better than the general market – this does not support Mr Cottage's argument[97] that there will be no material value growth during 2024. On the second point (annualised construction inflation rate), although Mr Cottage contends for 3.25% he acknowledged that whilst the approach that had led Mr Levine to 3% was different, it was not unreasonable.

52. It must also be borne in mind that Mr Cottage has not accurately identified the lower IRR for which he contends. He accepted that one cannot simply deduct (from Mr Levine's IRR of 10.43%) the figures that he discussed in oral evidence in respect of (i) the growth rate point and (ii) the construction inflation rate point.

53. THFC's contrary position is that Mr Levine's FVA "simply does not address Viability in the real world of the terms of the DA which will govern whether the redevelopment south of WHL will actually carry on and complete"[98]. It contends[99] that whether there is a reasonable prospect that the Scheme will proceed is governed by the Viability Conditions within the DA. It further contends that because the Required Return within the DA is redacted, the Inspector is unable to form a judgement as to whether the Scheme is "Viable" (applying the contractual definition from the DA) and that in consequence the Inspector's ability to judge whether the Scheme has a reasonable prospect of proceeding is prejudiced. This is Mr Katkowski KC's "fork in the road" point.

54. THFC's argument found upon the premise that the DA "can be terminated if its Viability Conditions are not met"[100]. Therefore – says THFC – one needs to know what the Required Return is within

[95] CD9.2.1 para. 4.46.
[96] CD9.23 paras. 7.21 and 7.22.
[97] CD11.17 para. 3(i).
[98] Opening submissions (CD11.04) para. 13.
[99] Cottage cross-examination.
[100] Cottage rebuttal (CD10.13) para. 5.11.

the DA, in order to assess the prospects of the Viability Conditions not being met, thus (allegedly) entitling Lendlease to "walk away"[101]. For the reasons we now give, that premise is false. It is based upon a misunderstanding of the relevant provisions of the DA. Mr Cottage's bald statement that the DA "can be terminated if its Viability Conditions are not met" is incorrect.

54.1. As Mr Cottage agreed, the Site Wide Conditions have been met and the DA is unconditional as regards those conditions. The DA is also unconditional as regards viability for Phases 1A, 1B, 2, 3 and 5. Phase 5 will deliver Plot E (including the Library and Learning Centre) and Moselle Square.

54.2. The first phase that is conditional as to viability is Phase 4, which is due to start Q1 2027.

54.3. Turning to the relevant provisions of the DA:

54.3.1. The obvious starting point is that the DA does not require the contracting parties to demonstrate that the Scheme (i.e. the eight phases of development to the south of White Hart Lane) is "Viable". The current sequence of phases approved by the Council as local planning authority[102] and agreed by the contracting parties[103] is in evidence before the inquiry. That sequence comprises of eight phases, including three (Phases 4, 6 and 7) that will contain Private Sale Homes and thus engage the phase viability conditions (Clauses 8.1 and 11.1 of the DA). But the Scheme is not itself identified as a distinct phase for the purposes of the DA. It follows that neither the Pre Planning Viability Condition (clause 8) nor the Post Planning Viability Condition (clause 11) require the contracting parties to appraise whether the Scheme is "Viable" within the meaning of the redacted definition of "Required Return" (DA pp. 32 and 37). That being the case, it is inevitable that the viability of the Scheme (which is the target of the Secretary of State's 2019 Guidance[104] at para. 106) must be assessed other than by reference to the DA. The DA simply does not provide for that assessment.

[101] CD11.04 THFC opening submissions, para. 15.
[102] CD4.37.
[103] Mason proof (CD9.03) section 8.
[104] CD5.01.

54.3.2. Delivery of the eight phases of development that are comprised in the Scheme is presently unconditional as to viability and will remain so until the contracting parties reach the stage of appraising whether Phase 4 is "Viable" for the purposes of the Pre-Planning Viability Condition (clause 8). That issue will not arise until at least 2026. By definition, the question whether the relevant Pre Planning Appraisal for Phase 4 shows that the Partner's Return for that Phase achieves the Required Return will be determined on the basis of the factual circumstances that exist at the date of that appraisal. The open definitions of "Phase Appraisal" and "Financial Model" on pp. 23 and 13 of the DA show that the question whether any Phase containing Private Sale Homes achieves the "Required Return" and is "Viable" is to be determined on the basis of up-to-date cost and financial information. By definition, that information is not available in November 2023 for the purposes of a Pre Planning Appraisal (DA p. 29 and Clause 8.2) which is likely to be carried out in 2026.

54.3.3. Nevertheless, THFC contend that the redaction of the contractual definition of "Required Return" prevents the inquiry from forming a judgement as to whether the first occurring Phase containing Private Sale Homes – Phase 4 (start date Q1 2027) will achieve that level of return and satisfy the Pre Planning Viability Condition (DA p. 29 and Clause 8). That being the case, on THFC's argument, there is a material risk that Lendlease will "walk away" before completion of the Scheme[105].

54.3.4. Given that the definition of "Required Return" is redacted for reasons of commercial confidentiality, the robust way to test that argument is to assume that the Pre Planning Appraisal in respect of Phase 4 submitted by Lendlease to the Steering Group in accordance with DA Clause 8.2 does not satisfy the Pre Planning Viability Condition.

54.3.5. That is a particularly robust assumption, because Lendlease is under a very strong obligation – see DA Clauses 8.2 and 8.2.1 - to use "all reasonable endeavours" both to satisfy the Pre Planning Viability Condition and to ensure that the Pre-Planning Appraisal will demonstrate that Phase 4 (and indeed any Phase

[105] CD11.04 para. 15.

containing Private Sale Homes) is Viable. That obligation is tantamount to a "best endeavours" obligation: see Brook Homes (Bicester) Ltd v Portfolio Property Partners Ltd [2021] 3015 (Ch) at [97].

54.3.6. Nonetheless, on that robust assumption, it remains to address THFC's principal contention, i.e. that failure to satisfy the Pre Planning Viability Condition for Phase 4 gives rise to a material risk that Lendlease will "walk away" and fail to complete delivery of the Scheme. That is the gravamen of THFC's asserted concern. See Mr Cottage's rebuttal proof at para. 5.11.

54.3.7. In order to test that contention, it is necessary to understand what are the contractual consequences of failure to satisfy the Pre Planning Viability Condition. The inquiry should plainly proceed on the basis the contracting parties – the Council and Lendlease – will act in accordance with their contractual rights and responsibilities.

54.3.8. The starting point is that it is the Steering Group (or the Expert if no agreement is reached), not Lendlease, which decides whether the Pre Planning Viability Condition has been satisfied: Clause 8.2.4. In the event that the Steering Group is not so satisfied, the matter is deemed to be a Mitigation Matter – see Clause 8.3. In short, the failure to satisfy the Pre Planning Viability Condition does not entitle Lendlease to "walk away".

54.3.9. The definition of "Mitigation Matter" is at p. 20 of the DA. It means "the failure of the Pre-Planning Viability Condition and/or the Post Planning Viability Condition in relation to a Phase". In other words, the very thing which the contracting parties have agreed to "mitigate" is the inability to satisfy the Required Return for any given Phase/Phases of the development containing Private Sale Homes. Clause 34 of the DA provides for Mitigation Matters. The Partner (Lendlease) must prepare a Mitigation Plan – Clause 34.1. The contents of a Mitigation Plan are described at DA p. 21. They must comprise "alternative proposals" for mitigating failure to satisfy a Pre Planning (or Post Planning) Viability Condition. The ingredients of such alternative proposals are set out in a (non-exhaustive) list. They include reducing the level of the Partner's

(Lendlease's) return, carrying forward Phase Deficits and waiving Phase Conditions (including Viability Conditions).

54.3.10. Following agreement of the proposed Mitigation Plan, under Clause 34.3 "the provisions of this Agreement shall apply *mutatis mutandis* to the Development as varied by the steps and actions set out in the Mitigation Plan". In other words, the contractual intention is that the parties should continue to perform their obligations under the DA with a view to delivering the Development notwithstanding the failure to satisfy the Pre Planning (or Post Planning) Viability Condition. It is the purpose of the Mitigation Matters regime under Clause 34 to ensure, as far as possible, that the parties remain committed to performance of their respective obligations under the DA, in circumstances where the Required Return is unable to be achieved in respect of any given Phase containing Private Sale Homes.

54.3.11. That evident purpose of Clause 34 is reinforced by Clause 34.4, which obliges the parties to act in good faith and use reasonable endeavours to overcome or minimise the consequences of the Mitigation Matter. THFC misunderstand that provision. It is not intended to absolve Lendlease from its contractual duty to prepare an effective Mitigation Plan for the purpose of mitigating failure to satisfy the Pre/Post Planning Viability Conditions for a Subsequent Phase. Rather, Clause 34.4 is an overarching duty placed on both parties to address that failure, which sits alongside the duty to prepare and act in accordance with the agreed Mitigation Plan.

54.3.12. THFC have also misunderstood the role of the expert in the context of Clause 34.2 and 34.3. Contrary to THFC's submission, it is the role of the expert to resolve disagreement between the parties as to the appropriate ingredients for a Mitigation Plan. See Clause 34.2 (last sentence) and the role of the expert as described in Clause 33.3 ("*33.3.2 The Council and the Partner agree that the determination of a dispute or difference between the parties in respect of the Residual Land Value of a Phase and Viability shall be a suitable matter to be determined by the Expert as provided for in this Agreement*"). These provisions further reinforce the evident contractual intention of the DA that failure to satisfy

a Pre/Post Planning Viability Condition should be mitigated and the parties remain obliged to deliver the Development.

54.3.13. For these reasons, failure to satisfy the Pre Planning Viability Condition (clause 8) and/or the Post Planning Viability Condition (clause 11) does not entitle Lendlease to terminate the DA. The true contractual position is that failure to satisfy a viability condition for any phase to which it applies does not of itself affect the obligation on Lendlease to accept a Phase Lease (Clause 21.1) or to carry out the Development (Clause 26 and Schedule 3). The clear common intention of the contracting parties is to identify alternative arrangements to mitigate that failure, whilst maintaining delivery of the Core Requirements and Council Facilities. Or put another way, the contracting parties both recognised the risk that Viability may not be achieved and provided for the continued performance of the DA in such circumstances.

54.3.14. Lendlease's performance of the DA is guaranteed by Lendlease Corporation Limited (Sch. 5 of the DA).

54.3.15. That brings us to Clause 37.3.1 of the DA, upon which THFC seek to found their argument that Lendlease can "walk away". That clause entitles the Council or Lendlease to determine the DA "if a Phase Unconditional Date has not occurred on or before the relevant Phase Condition Longstop Date and/or Phase Condition Drop Dead Date…". In order to understand the scope of that right, it is necessary to understand the definition of "Phase Unconditional Date" (p. 25 of the DA) – which "means the date on which the last of the Phase Conditions for a Phase has been validly satisfied or deemed or determined to be satisfied".

54.3.16. In the case of a Phase containing Private Sale Homes where a Mitigation Matter has arisen and a Mitigation Plan has been agreed, the relevant Pre or Post Planning Viability Condition will have been deemed to be satisfied by the steps and actions set out in the Mitigation Plan. That is the purpose and intention of Clause 34.3 of the DA. Otherwise, Clauses 8.3, 11.6 and 34 of the DA would be otiose and of no practical effect. Put another way, the existence of those clauses shows that the right to determine the DA under Clause 37.3 does not arise in any

case where a Mitigation Plan has been put in place for any Phase containing Private Sale Homes in accordance with Clause 34, following the failure to satisfy the Pre or Post Viability Condition.

54.3.17. On that correct analysis, Clause 37.3 provides the residual right to terminate the DA in respect of a given Phase in circumstances where (i) the applicable Phase Viability Condition has not been satisfied and it has not been possible to put in place a Mitigation Plan under Clause 34. Thus construed, Clause 37.3 is an unremarkable provision that will be found in most development agreements, which provide for limited rights of termination in circumstances where the contractual arrangements designed to maintain the currency and performance of the parties' obligations have been applied without success. In the case of this DA, those contractual arrangements have considerable force, for the reasons we have submitted.

54.3.18. For all these reasons, THFC have very greatly overstated the right of Lendlease to determine the DA in the event that at any given Phase that contains Private Sale Homes, Lendlease is unable despite all reasonable endeavours to produce a Viability Appraisal to the Steering Group which satisfies the Required Return. The true position is able to be established, without the need to go behind the redaction of the definition of Required Return. It is clear that, on a true construction of the relevant provisions of the DA, the foundation of THFC's argument is simply wrong: Lendlease cannot "walk away" in the event that the Pre Planning Viability Condition is not satisfied in relation to Phase 4 in 2026. To do so would put Lendlease in breach of contract. On the contrary, it is reasonable to anticipate that the operation of the DA, in accordance with the clauses which we have considered, will result in the continued performance of the DA and delivery of the Scheme, whether or not the contractual Required Return is achieved for Phase 4 in 2026 (or indeed for Subsequent Phases 6 and 7 thereafter). That is the stated intention of both the Council and Lendlease in evidence before this inquiry – as confirmed by both Mr O'Brien and Ms Mason.

54.4. At para. 6.2 of his rebuttal[106] Mr Cottage notes that "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". As Mr Cottage accepted, however, Lendlease would have considered the best interest of its shareholders when it entered into the DA in December 2017. Having done so, Lendlease was willing to sign up to an agreement that seeks to ensure that delivery under the DA continues in circumstances in which the Required Return is not met.

55. For these reasons, the Inspector does not need to know the Required Return in the DA to be able to reach a well-founded conclusion that the DA enables the Scheme to enjoy the reasonable prospects of proceeding. The DA is, as Mr Cottage accepted, designed for delivery across market uncertainty and turbulence. True it is that the DA does not ultimately require either party to drive itself into the ground: there is nothing remotely remarkable about that position. As Mr Cottage acknowledged, the DA seeks to reduce to a minimum the residual risk of termination of the agreement.

56. Mr Cottage summarised[107] his conclusion on viability as being "that there is a material risk that the Required Return will not be met and moreover that the return that the development produces may not meet Lendlease's requirements at the time the first viability assessments need to be undertaken at some point in 2026". In the light of Mr Levine's market facing appraisal, the established funding arrangements, Lendlease's track record, financial standing and access to investment funds, and the analysis of the DA set out above, we submit that Mr Cottage's conclusion is unwarranted. On the contrary, there is no good reason to doubt that the Scheme will continue to be delivered. It is relevant also that Mr Cottage made no suggestion that his conclusion would (if accepted) be fatal to the "reasonable prospect" test in the 2019 Guidance: he candidly admitted that it had to be "weighed in the balance" amongst other considerations.

57. Mr Cottage recognised that commercial confidentiality is important to companies such as Lendlease; his evidence was that the redaction of the Required Return was "not a unique situation". In the light of our analysis of the DA and of the evidence of Ms Mason and Mr Levine to which we have referred, there was and is no need for any of the alternative approaches

[106] CD10.13.
[107] In response to the Inspector's question.

canvassed by THFC (data room, use of an independent expert, non-disclosure agreements) to be taken in this case. An informed judgment of whether there is a reasonable prospect of the Scheme proceeding may be made on the basis of the material before the inquiry.

58. The situation here is completely different to the ***Vicarage Field*** CPO[108]:

58.1. In ***Vicarage Field*** no updated viability appraisal had been provided[109], leaving the inspector "in a position whereby the only independent evidence of viability presented concludes the CPO scheme to be substantially unviable 6 years ago". In contrast, the Inspector at this inquiry has the benefit of Mr Levine's appraisal in his main proof and an updated market facing appraisal produced by Mr Levine last week[110]. Both show positive returns on investment. The updated appraisal shows a positive profit on cost and on GDV. Mr Cottage accepted that his assumption of 8% finance costs was unrealistically high for a company with the financial profile of Lendlease, which would be in a position to drive down the cost of financing the project over the course of its delivery.

58.2. The AGL[111] in ***Vicarage Field*** entitled the developer to decide whether the CPO scheme should progress[112]. The developer was also entitled to reach its own "reasonable opinion" of viability. As Mr Cottage rightly acknowledged, under the AGL in ***Vicarage Field*** the developer was entitled to conclude that the CPO scheme was not viable and to walk away; progression of the CPO scheme was entirely at the whim of the developer (acting reasonably). As Mr Cottage also recognised, these factors carried significant weight in the ***Vicarage Field*** inspector's judgement that she was unable to conclude that there was a reasonable prospect that the scheme would proceed. Here, as we have explained, that is simply not the position.

58.3. Each case turns on its own facts. The ***Vicarage Field*** decision is one in which the facts were both striking and readily distinguishable from the present case.

[108] CD5.18.
[109] CD5.18, para. 144.
[110] CD11.17 – 13 November 2023.
[111] *Agreement for the grant of leases*.
[112] CD5.18 para. 157.

Absence of impediments – Main Issue 5

59. In satisfaction of the 2019 Guidance[113], there are no planning or other impediments to the implementation of the Scheme. The Planning Permission is no longer the subject of any legal challenge. The Council's exercise of its powers of appropriation in support of land assembly to clear away any residual proprietary impediments to delivery of the CPO scheme is explained by Mr O'Brien at para. 4.51 of his proof[114].

60. As regards Crown land[115]: the presence of a potential Crown interest does not present any insuperable impediment to implementation of the Scheme. This point is considered in more detail in the note dated 21 November 2023[116]. The position remains as *per* the final sentence of para. 8.17 of Mr O'Brien's proof[117]. There is no evidence of any third party interest in the acquisition of the land and the Council is satisfied that the Crown Estate is likely to be willing to sell the land to the Council.

Other points made by objectors (including steps taken to acquire the Order Land by agreement)

61. We turn to consider other points made by objectors to the Order and not yet addressed in these submissions, in particular the steps taken by the Council to acquire the Order Land by agreement. In accordance with paras. 2 and 17 of the 2019 Guidance, the evidence demonstrates that the Council has taken reasonable steps to acquire all of the land and rights included in the Order by agreement.

62. Of the eleven objections made to confirmation of the Order, four have since been withdrawn (#1 Done Brothers[118]; #5 Network Rail Infrastructure Limited[119]; #6 Rail for London Ltd[120]; and #10 Susan Nguyen / The Nail Group Ltd[121]).

63. The seven remaining objections are the following and we consider them in turn:
    63.1. #3 the Tryfonos Family
    63.2. #8 THFC

[113] CD5.01 paras. 15 and 104.
[114] CD9.01.
[115] Section 20 of the 2019 Guidance (CD5.01).
[116] CD11.41.
[117] CD9.01.
[118] CD6.Obj-01.1.
[119] CD11.30.
[120] CD6.Rep-2.1.
[121] CD6.Obj-10.1.

63.3. #11 Ms Powell

63.4. #9 Mr Sherbanov

63.5. #4 Kingwell Investments Ltd and Dr & Mrs R Jeyarajah ("**Kingwell**")

63.6. #2 Mr Dellal

63.7. #7 Tottenham Hotspur Foundation ("**the Foundation**")

Objector #3: The Tryfonos Family

64. Turning to the steps taken to acquire the Tryfonos Properties by agreement, as Mr O'Brien emphasised[122] the Council recognises the contribution that the Tryfonos Family makes to the High Road neighbourhood and is committed to keeping businesses and communities together. In relation to Chick King specifically, Mr Tryfonos accepted that the Council genuinely wants to see the business continue to succeed. The Tryfonos Family have operated Chick King very successfully since 1991 and the business has established an impressive reputation both locally and across London. As such, there is a strong incentive for the Council and Lendlease to ensure that Chick King continues to operate in the area. Ms Mason's evidence[123] was that Lendlease "would strongly consider [supporting existing businesses] a priority" and that it was in Lendlease's interests to ensure that transition in the Scheme is done with minimum disruption. She emphasised that Lendlease is "fundamentally committed" to providing the right location for businesses wishing to relocate. That commitment is evidenced by the most recent relocation offer made to the Tryfonos Family in respect of its businesses (below).

65. The extent to which the Council and Lendlease have engaged with the Tryfonos Family is set out in detail at paras. 4.68 to 4.104 of Mr Franklin's proof[124] and in his rebuttal[125]. That engagement dates back as far as 2015.

66. As to para. 7 of the Tryfonos Family's opening statement[126], in satisfaction of the 2019 Guidance negotiations were undertaken in parallel with the preparation and making of the Order. Considerable attempts were made to progress negotiations with the Tryfonos Family in advance of making the Order[127]. As they acknowledge, two formal offers were made prior to the Order

[122] Evidence-in-chief.
[123] Evidence-in-chief.
[124] CD9.09.
[125] CD10.06.
[126] CD11.06.
[127] Franklin rebuttal (CD10.6) para. 2.4.

being made[128]. It is important to note that Mr Tryfonos made it clear during the early discussions that his view was that detailed negotiations would not be appropriate until the Scheme was more advanced[129]. The Tryfonos Family have declined numerous offers to purchase their properties.

67. Summarising the position in respect of the relocation of the Tryfonos Family's businesses:

67.1. Whilst the Business Charter[130] was approved by the Council in "draft" form[131], Mr Franklin's evidence was that "everything in it is good practice and what we would expect to be done"[132]. The Council is working to the commitments set out in the Business Charter[133]. Ms Buono questioned Mr O'Brien's evidence[134] that the Council "is committed to delivering on the Business Charter and has secured contractual obligations through the CPOIA and the [Section 106 Agreement] to ensure that Lendlease are required to comply with its terms". It is however clear from cl. 4.4.2 of the CPOIA[135] that negotiations and acquisitions under the CPOIA are required to take place "in accordance with […] the Council's Business Charter"; Mr O'Brien confirmed that that was his reading of the CPOIA[136].

67.2. As Mr Franklin explains[137], the principles set out in the Business Charter are also encapsulated in the Section 106 Agreement, which requires Lendlease to offer space within the Scheme exclusively to existing businesses, subject to prescribed terms. Those terms include a minimum lease term of five years; and the choice of discounted rent for the first five years, a rent free period, a capital contribution or any combination of those amounting to an equivalent value. Mr O'Brien confirmed[138] that the four elements of the "Business Relocation Strategy" as defined in the Section 106 Agreement[139] chime with

[128] CD11.06 para. 7.
[129] Franklin rebuttal (CD10.6) para. 2.4.
[130] CD5.07.
[131] O'Brien proof (CD9.01) para. 7.6.
[132] Response to Inspector's question.
[133] O'Brien evidence-in-chief.
[134] Proof (CD9.01) para. 7.6.
[135] CD5.04.
[136] Evidence-in-chief and re-examination.
[137] Proof (CF9.09) para. 4.27 ff.
[138] Re-examination.
[139] Para. 1.1 of Sch. 11 (CD4.29).

the four commitments that are set out in section two of the Business Charter[140]. Whilst under the Section 106 Agreement at least 40% of the total Commercial Development within the Development must be offered to existing business occupiers, it is not Lendlease's intention to limit occupation by such occupiers to that 40% figure[141]. Rather, Lendlease's intention is to respond to demand from existing businesses who wish to relocate to units within the Scheme.

67.3. Building on the principles set out in the Business Charter, in May 2023 the Council distributed a Business Support Leaflet[142] with a view to updating those parties who had not previously engaged[143]. A number of responses were received[144]. That initiative sat alongside (rather than superseding) the engagement work undertaken prior to that point.

67.4. Contrary to the assertion made in the Tryfonos Family's opening statement[145], a reasonable offer has been made for the relocation of their businesses (Chick King and K&M Stores). See Mr Franklin's letter of 23 October 2023[146], which in addition to re-providing information in relation to a potential relocation to Moselle Square sets out heads of terms for an offer of relocation within the Scheme into units on the High Road opposite the THFC stadium. It should be noted that:

67.4.1. The letter confirms that the Council and Lendlease will be willing to offer at least equivalent floorspace to the current Chick King and K&M Stores units;

67.4.2. Leases within the security of tenure provisions of the Landlord and Tenant Act 1954 are proposed; alternatively a long lease of c. 242 years;

67.4.3. Rent is offered in line with Lendlease's commitments within the Section 106 Agreement (above); and

[140] The first bullet point of the Section 106 Agreement definition chimes with Charter Commitment 4; the second bullet point with Charter Commitment 2; the third bullet point with Charter Commitment 4; and the fourth bullet point with a combination of Charter Commitments 1 and 3.
[141] Mason cross-examination.
[142] CD5.08.
[143] Franklin proof (CD9.09) para. 4.16.5.
[144] Franklin evidence-in-chief.
[145] CD11.06 para. 6.
[146] CD10.7.3.

67.4.4. The letter explains that if the businesses relocate to Moselle Square there will be no need for temporary relocation or pause in trading; alternatively if the High Road units are preferred Lendlease and the Council are willing to support the Tryfonos Family "to develop meanwhile/temporary options for their businesses within the Scheme or nearby during this period, to allow the businesses to continue to trade"; the Council and Lendlease are "prepared to consider compensating [the Tryfonos Family] for lost or reduced profit during that time period".

68. The complaint made by the Tryfonos Family in response to this and previous offers of relocation within the CPO Scheme has been that the precise position and layout of the replacement unit is uncertain. That is correct, but it is an inescapable consequence of the stage of development of the detail of the CPO Scheme. Put simply, reserved matters have yet to be submitted or approved. Nevertheless, the commitment to offer appropriate new premises for both businesses at locations with very high footfall and well placed to continue to capture passing trade from the Stadium is clear from Mr Franklin's offer letters. It is submitted that the Council and Lendlease have acted reasonably and proactively in the circumstances as they presently stand.

69. Turning to the Tryfonos Family's residential properties, the Council has taken reasonable steps to acquire those properties by agreement too. See Mr Franklin's letter of 6 October 2023[147], which (under the heading "Equity loan offer") responds to the Tryfonos Family's objection that the Council has not extended the terms of the Love Lane Leaseholder Offer to them. Mr Franklin explains that the Council has given careful consideration to that concern and confirms that the Council has resolved to extend the offer of an equity loan to the resident owner-occupiers of the Tryfonos Properties (i.e. to Kate Tryfonos as owner-occupier of 755a High Road and to Kyriacos and Maria Tryfonos as owner-occupiers of 757a High Road), on the same terms as that set out in the Love Lane Leaseholder Offer. The letter also identifies an alternative option "to buy a residential property on the open market without financial support by the Council, but with practical help where required". The letter explains that the leasehold swap option noted in the Love Lane Leaseholder Offer is not available because the Tryfonos Family do not occupy a property that is leased by the Council.

[147] CD9.10.3 p. 148.

70. Mr O'Brien explained[148] that the timing of the Love Lane Leaseholder Offer being extended to the Tryfonos Family resulted from the fact that the Council did not have a policy in relation to third party leaseholders.

71. Having regard to the above and to the entirety of Mr Franklin's written and oral evidence, we submit that his professional judgment that meaningful negotiations have taken place with the Tryfonos Family is well-founded.

Objector #8: THFC

72. The first three "fundamental concerns" identified by THFC[149] have been addressed above. The other concern identified is crowd flow. The evidence of both Ms Hayward and Mr Ancliffe (the crowd flow experts) on technical matters can be put to one side and need not be considered, since that evidence has been superseded by the assurances given by Lendlease[150]. It is also common ground that those assurances address the technical aspects of THFC's crowd flow objection.

73. The assurances given by Lendlease sit within the context of the regulatory controls imposed by condition 64 of the Planning Permission and Schedule 13 of the Section 106 Agreement. Condition 64 to the Planning Permission[151] ensures that crowd flow provision will be no less than existing provision, on both an interim and final basis. Schedule 13 to the Section 106 Agreement dated 31 August 2022[152] requires Lendlease to use all reasonable endeavours to grant an access licence to THFC across the Order Land for events in the THFC stadium on the specified terms set out in that schedule. In [31]-[50] of his Judgment (CD5.17) Saini J roundly rejected THFC's complaints about the adequacy of those regulatory controls to provide both appropriate arrangements for crowd management and safety for large events at the Stadium and to secure appropriate access rights to THFC for that purpose. See in particular [47]-[50] of the Judgment. At [50], Saini J concluded that *"In my judgment, the Council was lawfully satisfied that the planning permission created a framework which would ensure that the access to the stadium (which was a key planning consideration) would be satisfactorily achieved without unreasonable impact on [THFC]. I also find that it was lawfully satisfied that the combination of the s.106 agreement and the conditions would*

[148] Evidence-in-chief.
[149] CD11.04.
[150] CD11.38.
[151] CD4.28.
[152] CD4.29.

adequately safeguard its interests and that the grant of consent was therefore compatible with the [Agent of Change] Principle".

74. Mr Serra's evidence needs to be considered in the context of the Judge's clear conclusions. Securing appropriate arrangements to enable THFC to access the Order Land for crowd management and control purposes during football matches and major events at the Stadium was primarily a planning issue to be resolved by the LPA in granting the Planning Permission. It has been resolved on terms and conditions which the Judge found to be appropriate and satisfactory. There is no reason for this Inquiry to revisit those matters.

75. In any event, matters have progressed. On 23 October 2023, Lendlease wrote to Mr Serra "*With a view to agreeing the terms of a Temporary Access Licence/Access Licence with THFC*" and setting out Lendlease's position in respect of each of the Licence Specified Terms (Appendix 3 of Selina Mason's Rebuttal Proof – CD10.4.3). In so doing, Lendlease was acting in accordance with the planning obligation imposed by paragraph 7.2 of Schedule 13 to the Section 106 Agreement (CD4.29 page 145). Other words, Lendlease was seeking to negotiate with THFC for the grant of an Access Licence on the Licence Specified Terms (see pages 147/148 of CD4.29). Lendlease's proposed terms were in accordance with the Licenced Specified Terms, including confirmation that no substantial fee would be sought in relation to football matches and other major events within the scope of THFC's current planning permission.

76. The planning obligation expressly contemplated that Lendlease (as developer) may be willing to agree to further access terms beyond those in the Licence Specified Terms, but was not required to do so: see paragraph 7.2(b) of Schedule 13 to the Section 106 Agreement. As we have submitted, the Judge found the arrangements for the grant of the access licence in Schedule 13 to the Section 106 Agreement to be both reasonable and to accord with the "agent of change" principle. Lendlease's letter of 23 October 2023 stated its willingness to "work co-operatively" with THFC and to take a "pragmatic approach" to the Licence Specified Terms. This is not the position of a party who is unwilling to negotiate.

77. Against this background, Mr Serra's asserted concerns are without merit. THFC's position is that it strongly supports the realisation of the NT5 allocation. One of the key requirements of that site allocation is the creation of a new route between the Station and the Stadium. Necessarily, that new route will pass across private land. The LPA has imposed conditional controls and obtained planning obligations which are designed to safeguard THFC's position in crowd management and

control for the purposes of football matches and other major events at the Stadium. The High Court has found those regulatory arrangements to be appropriate and reasonable for those purposes. Lendlease has indicated its readiness to give effect to its planning obligations and to grant the Access Licence on the Licence Specified Terms and to negotiate for further terms. That process is ongoing.

78. There is simply nothing in this that supports Mr Serra's complaint that THFC is being held to ransom. His assertion that confirmation of the CPO is being sought for the purpose of creating a ransom position is unfounded and absurd. In reality, the issue of confirmation of the CPO does not affect the position established by the grant of Planning Permission and the planning obligations given by Lendlease in Schedule 13 to the Section 106 Agreement. Mr Serra and THFC should do what he appears to be reluctant to do, and negotiate (rather than seek to dictate). The Inspector should proceed on the basis of the Judge's conclusions.

79. More generally, THFC's objection to the Order appears to be motivated by resentment. Mr Serra's evidence was that the Council had "reneged" on its commitments in the Memoranda of Understanding. But that pejorative assertion is misconceived. The signed MoU records THFC's agreement that nothing in its terms should override the Council's performance of its public law and local government duties (Serra Appendix C). As Mr O'Brien explains in his Rebuttal Proof (paragraphs 3.11 to 3.16), the Council acting on legal advice decided that its selection of a development partner for the Regeneration Scheme must be undertaken in accordance with the Competitive Dialogue Procedure under the Public Contracts Regulations 2015. In short, the Council acted in performance of its public law and local government duties. Mr Serra accepted that the Council could not be expected to override those legal responsibilities in favour of THFC. Indeed THFC must be taken to have recognised that when it signed the MoU in 2013 in the terms recorded. Mr Serra's evidence in paragraphs 3.79 – 3.80 of his proof is therefore difficult to understand. The Council was not obliged to stick with THFC, come what may. The Council was obliged to select a development partner in accordance with the legal process which governed that decision. That is what the public interest demanded and continues to demand. As Mr Serra accepted, confirmation of the Order will not prejudice THFC's ability to bring forward development of its lands to the north of White Hart Lane.

<u>Objector #11: Ms Powell</u>

80. Returning to Ms Powell's objection, she contends that the Love Lane Estate has been deliberately run down by the Council. The Council refutes that assertion[153] but in any event, Ms Powell accepted that even if it were the case that the Estate had experienced "managed decline", that would not by itself be sufficient reason to refuse to confirm the Order.

81. A detailed response to Ms Powell's grounds of objection concerning alleged lack of engagement is provided by Mr O'Brien at para. 15.89 of his proof[154]. Ms Powell was candid that she saw no purpose in negotiation until the planning position had been confirmed by the grant of the Planning Permission at the end of August 2022.

82. A rent and interest-free equity loan offer has been made to Ms Powell and remains available pursuant to the Love Lane Leaseholder Offer[155]. The Council has explained the position in relation to succession rights[156] and has also confirmed that it would be willing to take the necessary steps towards offering Ms Powell a replacement leasehold home within Plot A, which would enable her to make a single move from her current property[157]. Further correspondence with Ms Powell during the course of the inquiry (CD11.20) has addressed her questions about service charges and related issues.

83. Ms Powell is particularly opposed to the fact that acceptance of the equity loan offer would result in her sharing the equity in her (new) property with the Council, in contrast to her current position (Ms Powell owns the leasehold interest in her home outright). She referred in her oral evidence to an affordability "chasm". Irrespective of whether it is more accurate to refer to an affordability "chasm" or to an affordability "gap", the response of Government policy to that gap is that it should be bridged by the acquiring authority effectively underwriting the gap in the form of a shared equity arrangement. See DCLG's December 2016 *Estate Regeneration National Strategy – Resident Engagement and Protection*[158]. The Mayor of London's stance is the same: see his February 2018 *Better homes for local people* Good Practice Guide[159]. The Council's Leaseholder Offer reflects these policy arrangements. Neither national nor regional policy offers any support

[153] O'Brien proof (CD9.01) para. 15.88.
[154] CD9.01.
[155] *Ibid.* para. 15.95.
[156] *Ibid.* para. 15.96.
[157] *Ibid.* para. 15.101.
[158] CD5.02.
[159] CD5.03.

for the notion that those impacted by estate regeneration should be offered an opportunity to take a replacement lease in the regenerated estate outright.

Objector #9: Mr Sherbanov

84. Mr Sherbanov occupies 85 Whitehall Street on an Assured Shorthold Tenancy ("**AST**") let by private landlords. He was not eligible to vote in the 2021 resident ballot[160].

85. As part of the land referencing process undertaken prior to the making of the Order, two land interest questionnaires ("**LIQs**") were served on the property, addressed to Erdal Pinar and Gulseren Pinar in their capacity as the registered leasehold owners of the property[161]. They are also Mr Sherbanov's landlords. Mr Sherbanov did not dispute that the specialist land referencers who carried out the land referencing process used best practice desktop and contact referencing[162]. Although the LIQs included a request for information on any occupiers residing at the property, no responses were received.

86. As a result, Mr Sherbanov's occupation of 85 Whitehall Street was not identified through the land referencing exercise prior to the making of the Order and that fact is not recorded in the Order Schedule. That omission will not however affect the Council's ability to exercise its powers of compulsory purchase so as to acquire 85 Whitehall Street (assuming that the Order is confirmed): see the note submitted to the inquiry as CD11.40.

87. As required, however, notices were affixed to conspicuous objects on the Order Land for the duration of the objection period (8 February 2023 to 8 March 2023). The Order came to Mr Sherbanov's attention and he was able to submit an objection in time.

88. Following receipt of Mr Sherbanov's objection to the Order, the Council engaged with him by e-mail on 30 May 2023, 1 June 2023, 14 June 2023 and 3 July 2023[163]. Mr Mundy met with Mr Sherbanov at 85 Whitehall Street during the week commencing 26 June 2023 and again on 11 July 2023 (see paras. 15.73 and 15.74 of Mr O'Brien's proof[164]). On 1 September 2023 Mr Mundy wrote

[160] O'Brien rebuttal (CD10.01) paras. 5.2 to 5.5. Mr Sherbanov confirmed in cross-examination that he was not on the Council's Housing Register in July 2020.
[161] CD10.02 pp. 151 and 170.
[162] CD7.1 (Council's statement of case) p. 88.
[163] CD10.02 pp. 189 ff.
[164] CD9.01.

to Mr Sherbanov[165] to explain (i) that vacant possession of the property would not be required until Q1 2025; (ii) that the Council had made a purchase offer to his landlords on that basis, providing them with the option of continuing Mr Sherbanov's AST until Q1 2025; and (iii) that whilst the Council could not control what action the landlords might take, its Rehousing Team was committed to supporting Mr Sherbanov through the regeneration process.

89. On 9 November 2023, Matthew Clements from the Council's Housing Needs team telephoned Mr Sherbanov and discussed the support available, including assistance with finding suitable private rented sector accommodation.

90. Mr Sherbanov argues[166] that the Council is in breach of its duty under s. 3 of the Local Government Act 1999 ("**Section 3**") for failing to consult – in advance of making the Order - with private tenants residing on the Love Lane Estate in respect of the Council's proposal to redevelop the Estate under the wider High Road West Regeneration Scheme. Mr O'Brien's evidence is that Mr Sherbanov's argument is incorrect as a matter of fact[167]. In any event, Mr Sherbanov's argument (that Section 3 imposed upon the Council the duty purportedly identified by Mr Sherbanov) is wrong in law: see the note submitted to the inquiry as CD11.39.

Objector #4: Kingwell

91. As Mr Horne explains[168], the Section 106 Agreement provides a mechanism for the reprovision of the existing Health Centre within the Scheme. Lendlease is required to submit details of the Health Centre and its specification (including leasing arrangements) alongside the reserved matters application seeking its reprovision. Lendlease must have provided this new facility before the existing Health Centre is demolished. The only exception to this is if an alternative location is found by the Health Centre and its relocation is facilitated ahead of the redevelopment of the plot it sits in. See Sch. 15 to the Section 106 Agreement[169]. As noted by Mr O'Brien[170], those provisions ensure that the provision of GP services currently available in the area will be maintained notwithstanding the compulsory purchase of 759 High Road (the property from which the Health Centre currently operates).

[165] CD10.02 p. 197.
[166] CD9.31, para. 1.
[167] Rebuttal (CD10.1) paras. 5.2 to 5.5.
[168] Proof (CD9.05) para. 4.20.
[169] CD4.29.
[170] Proof (CD9.01) para. 15.31.

92. Mr Franklin summarises the efforts that have been made to acquire 759 High Road by private treaty at paras. 4.105 to 4.117 of his proof[171]. There has been a substantial level of engagement. Five meetings have taken place with Kingwell's agents. Options have been put forward to Kingwell to relocate the Health Centre into the Scheme. A financial offer for the freehold interest in the property was also made in July 2023 and a "not before" date of Q2 2026 was confirmed. Kingwell does not claim that there has been a lack of engagement.

93. Kingwell maintains its objection on the grounds that (i) the Health Centre "is to be acquired early, and there is no justification for this"; (ii) there is a lack of clarity as to how the land will be used; and (iii) there are concerns over the viability and deliverability of the Scheme.

94. Those grounds of objection are addressed by Mr O'Brien at paras. 15.33 to 15.35 of his proof[172]. They are not well founded. In particular, 759 High Road falls within Plot E of the Scheme. The analysis set out above in respect of the Tryfonos Properties thus applies equally to grounds (i) (timing) and (ii) (intended use) of Kingwell's objection. As to (iii) (viability and deliverability), that has been addressed above in response to the case advanced by THFC.

Objector #2: Mr Dellal

95. Mr Dellal holds (as an investment) the freehold interest in 739 High Road, which comprises a ground floor shop with a residential flat above. The ground floor shop is let and occupied by Murugan Cash & Carry Limited and Notemachine UK Limited; it is understood that the first floor residential flat (739a High Road) is let to a private tenant. The Council and Lendlease have met with the business tenant. They have also made extensive efforts to reach an agreement with Mr Dellal to acquire his interests by private treaty: see paras. 4.15, 4.54 to 4.67 and 5.4 to 5.9 of Mr Franklin's proof[173]. The attempts to engage with Mr Dellal date back to 2018. Mr Dellal did not respond to any correspondence prior to the making of the Order but since that date Mr Franklin has been engaged with his representative, Keith Murray. A formal offer was made in June 2023 but was declined by Mr Dellal.

96. As an investment owner Mr Dellal will receive land compensation for the acquisition of his interest, in accordance with the Compensation Code. Should he so wish, he will be able to invest that compensation in a similar premises to compensate for the loss of income.

[171] CD9.09.
[172] CD9.01.
[173] CD9.09.

Objector #7: The Foundation

97. No weight should be given to this objection. The Foundation's interest was included in the Rights of Light Schedule attached to the Order Schedule[174]. However, the Foundation has since confirmed that its interest in the property does not benefit from a right of light, such that the Foundation should not have been included within the Rights of Light Schedule. The Foundation is not a "qualifying person" for the purposes of the Acquisition of Land Act 1981 and its rights will not be interfered with as a result of the Scheme.

98. The Foundation's contention that the Scheme "fails to generate employment in the area" is baseless, as Mr O'Brien explains[175]. The Foundation contends that better alternatives for the redevelopment and regeneration of the area exits but has not provided any alternative proposals. Finally, the requisite compelling case in the public interest is made out, as these submissions demonstrate.

Human rights and the PSED

99. The requirements of the Human Rights Act 1998 and of the European Convention on Human Rights ("**ECHR**") are addressed by Mr O'Brien in detail in section 13 of his proof[176]. There is no doubt that confirmation of the Order will interfere directly and seriously with the Article 8 and Article 1 Protocol 1 rights of both Ms Powell and the Tryfonos Family. Mr Sherbanov and his family's Convention rights will also be affected, albeit that he enjoys only limited security of tenure. There is a clear duty to accommodate a health centre within the development of the Order Land under the planning obligations in Schedule 15 to the Section 106 Agreement. Other remaining objectors (Canvax Ltd, Mr Dellal, Kingwell Investments Ltd) are reversionary freehold owners whose Article 1 Protocol 1 rights will plainly be vindicated by the payment of statutory land compensation for the purchase of their interests.

100. In order to justify the interference with the Convention rights of both Ms Powell and the Tryfonos Family, the evidence must establish not only that their property is required for the CPO Scheme to be delivered and that its compulsory acquisition is compellingly justified in the public interest. In considering the latter question, the arrangements offered by the Council as AA to accommodate the inevitable disruption to those objectors' private lives and enjoyment of their

[174] O'Brien proof (CD9.01) para. 15.43.
[175] *Ibid.* para. 15.46.
[176] CD9.01.

property are plainly to be weighed in the balance, since they supplement those objectors' rights to statutory land compensation.

101. For the reasons we have given above, we submit that the Inspector is able to reach the clear conclusion both that Ms Powell's and the Tryfonos Family's property is required for the CPO Scheme to be delivered in accordance with the adopted Development Plan and the Planning Permission; and that the acquisition of their property and interference with their Article 8 rights is both compellingly justified in the public interest and in proportion to achieving the purposes which the Order seeks to facilitate. To remove Ms Powell's flat and the Tryfonos Family's High Road premises from the Order would defeat the Council's ability to fulfil the objectives of the CPO Scheme and to realise the long standing and established purpose of regenerating the Order Land in accordance with the adopted Local Plan. The Council and Lendlease would be unable to deliver the Core Requirements of the DA. The Council and Lendlease have made appropriate arrangements under the Leaseholder Offer and the specific offers of relocation within the CPO Scheme to those objectors, which should carry significant weight in drawing the fair balance and support the conclusion that the degree of interference with Ms Powell's and the Tryfonos Family's Convention rights is proportionate and necessary. The same analysis applies to Mr Sherbanov's Convention rights.

102. More generally, the evidence demonstrates that the purposes for which the Order is sought justify interfering with the human rights of those with an interest in the affected land, having particular regard to Art. 8 of the ECHR and Art. 1 of the First Protocol to the ECHR. Mr O'Brien explains how the Council has sought to minimise the degree of interference with the rights that those affected enjoy pursuant to those provisions. The compelling case in the public interest for confirmation of the Order outweighs that interference, which is both necessary (in order to achieve the purposes for which the Order is sought) and proportionate.

103. The Council has discharged the PSED: see section 14 of Mr O'Brien's proof, which discusses this matter in detail. An updated Equalities Impact Assessment ("**EqIA**") is provided as Appendix 2 to Mr O'Brien's proof. Both the EqIA and equalities impacts will be monitored and reviewed throughout the progression of the Scheme, in order to ensure that the identified mitigation measures are being delivered and that any future impacts can be measured and mitigated as necessary.

Conclusion

104. For the reasons summarised above and on the evidence before this inquiry, the Council respectfully submits that there is a compelling case in the public interest for confirmation of the Order and requests that the Order be confirmed.

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22 November 2023