

Committee/Meeting: Cabinet	Date: 25 July 2012	Classification: Unrestricted	Report No: CAB 0019/123
Report of: Corporate Director of Development and Renewal Originating officer(s) Jackie Odunoye / Niall McGowan		Title: Blackwall Reach Regeneration Scheme Wards Affected: Blackwall and Cubitt Town	

Lead Member	Cllr Rabina Khan
Community Plan Theme	A Great Place to Live
Strategic Priority	Providing quality affordable housing, improving public realm, improving connectivity.

1. **SUMMARY**

- 1.1 This report seeks delegated authority to include additional interests in a previously agreed resolution to make a compulsory purchase order (CPO), to facilitate the delivery of housing regeneration as part of the Blackwall Reach Project, including Robin Hood Gardens Estate.

2. **DECISIONS REQUIRED**

Cabinet is recommended to:-

- 2.1 Authorise the Corporate Director of Development and Renewal and the Assistant Chief Executive (Legal) to make a Compulsory Purchase Order either under the provisions of s17 of the Housing Act 1985 or under Section 226(1) of the Town and Country Planning Act 1990 (as amended), to acquire all necessary interests (excluding the freehold interests already owned by the Council and the Greater London Authority) in the land shown coloured pink and edged red on the CPO Map shown as Appendix 1, including existing interests and new rights, pursuant to section 13 of the Local Government (Miscellaneous Provisions) Act 1976.
- 2.2 Delegate to the Director of Development and Renewal in consultation with the Assistant Chief Executive (Legal) the power to take all necessary procedural steps in making the compulsory purchase order including:-
- 2.2.1 Making of the compulsory purchase order, the publication and service of notices and thereafter seeking confirmation of it by the Secretary of State (or, if permitted, by the Council pursuant to Section 14A of the Acquisition of Land Act), including the preparation and presentation of the Council's case at any Public Inquiry which may be necessary.

- 2.2.2 To acquire interests in land and new rights within the compulsory purchase order boundary either by private agreement or compulsorily.
- 2.2.3 To approve agreements with land owners or others setting out the terms for withdrawal of objections to the compulsory purchase order, including where appropriate seeking exclusion of land or new rights from the compulsory purchase order and or making arrangements for the re-housing or relocation of occupiers.
- 2.2.4 To publish and serve notices of confirmation of the CPO and thereafter to execute and serve any general vesting declarations or notices to treat and notices of entry and to acquire those interests and obtain possession to secure the development proposals.
- 2.2.5 To refer and conduct disputes relating to compensation at the Lands Tribunal or any court of law.

3. REASONS FOR THE DECISIONS

- 3.1 The decisions sought within the report are to acquire the land and properties in order to enable the regeneration and development of the Blackwall Reach area. This includes lands owned freehold by both the Council and the HCA, which has now been succeeded by the Greater London Authority (GLA), on which there are long leases.
- 3.2 The Cabinet approved the Blackwall Reach Regeneration Framework in March 2008 and has considered reports dealing with the proposed development of the area in July 2009 and March 2010, and resolved to use its CPO powers on 9 February 2011. Outline planning permission has now been secured for the regeneration project.
- 3.3 The development of the area will greatly assist the Council in meeting its housing targets for delivering the essential need for new homes and affordable homes.
- 3.4 The previous reports have indicated many significant public benefits that the project will bring including the delivery of affordable housing, physical and environmental improvements to the public realm, establishment of a community trust with an initial endowment to be used for the purposes of community improvements, a new community facility, the creation of new employment, a contribution towards the creation of a new (three form) primary school in the locality and improving pedestrian access to Poplar High Street. These benefits have been secured by entering into contractual arrangements or by Section 106 obligations accompanying the outline planning permission.
- 3.5 There has also been a lengthy ongoing dialogue with residents most directly affected by the scheme, many of whom live in overcrowded and unsuitable housing. This regeneration scheme will enable a resolution of the housing overcrowding in the Robin Hood Estate and for those residents who choose to exercise their other local options for rehousing.
- 3.6 As previously reported the use of compulsory purchase powers will ensure the delivery of the site assembly process in accordance with both the development programme and the contractual obligations of the Council to provide vacant possession of land for the purposes of the regeneration works. Whilst negotiations continue, to acquire the relevant land for the project by voluntary agreement, the use

of CPO powers will ensure the scheme is delivered even if negotiations are unsuccessful.

- 3.7 In summary, the redevelopment will secure the delivery of a significant and comprehensive mixed use development. It will deliver numerous improvements and benefits for the area. Such comprehensive redevelopment gives rise to the need to consider appropriate phasing and indeed the development will be carried out in phases notwithstanding that compulsory purchase of land within the development site is necessary to deliver significant elements of the scheme. The site is in different ownerships and in order to secure its assembly within a reasonable timeframe, it will be necessary to make a compulsory purchase order in parallel with continuing discussions to acquire the land and interests in it by private treaty. The benefits of the scheme, taken together with the need to use CPO powers to ensure its timely delivery and the proposed backing by preferred developers, all go to illustrate that there is a compelling case in the public interest for the use of CPO powers in this instance to secure the regeneration of the Blackwall Reach area.
- 3.8 To support the CPO process a CPO Map has been produced with a red-line boundary, which corresponds to the red-line of the outline planning permission. This map is shown as Appendix 1. Land referencing has been carried out in respect of all the land contained within the redline line boundary of the CPO Map
- 3.9 On 9 February 2011 Cabinet resolved to use CPO powers to acquire residential commercial and miscellaneous interests as set out in Appendix 2, 5 and 5a, to the 2011report. Following the land referencing exercise on the whole site additional non residential interests, miscellaneous footways and parts of amenity land have also been identified, which need to be included in the CPO.

4. ALTERNATIVE OPTIONS

- 4.1 The main variant options are not to proceed at all with the proposals or to delay making a decision to proceed.
- 4.2 A decision not to proceed with the proposals, or to delay making a decision, would lead to a less comprehensive approach to the development; this could put the Council in a position where it is unable to deliver the site for assembly, in accordance with its obligations under contractual arrangements it has entered into with its development partners.

5. BACKGROUND

- 5.1 The Council's purpose in seeking to acquire the land under the CPO is to facilitate the delivery of a comprehensive scheme of housing regeneration of the area known as Blackwall Reach and its immediate environs.
- 5.2 Much of the residential part of the order land being Robin Hood Gardens was built in the 1960's and is in need of significant capital investment. Tower Hamlets is the third most deprived local authority in England and regeneration of Robin Hood Gardens which is recognised as amongst the 10% most deprived estates in England, is an urgent priority for the Council. The vast majority of the rented dwellings that lie within the Scheme fail one or more of the criteria for the 'Decent Homes Standard' (as defined by the Government).

- 5.3 The Robin Hood Gardens Estate suffers from poor urban design, which compromises the quality of the local environment and exacerbates social malaise. The Council has investigated the opportunity to refurbish the estate, but concluded that the poor design and poor physical state of the buildings would prevent any refurbishment from adequately resolving the problems of the estate. The numerous issues which impact significantly on the quality of life for the residents in the area include non-operational lifts, inadequate security to the blocks and individual homes, poor thermal and acoustic insulation, inadequate refuse disposal and collection facilities and poor quality public open space. In addition to the problems presented by the physical condition of the housing and environment the area suffers from severe social disadvantage with high levels of unemployment, a high incidence of crime and anti-social behaviour, low incomes and poor health.
- 5.4 Robin Hood Gardens Estate, despite its height, is actually a relatively low-density development. The land at Blackwall Reach is therefore currently under-used compared to urban housing densities in London, which would otherwise be expected in such a central location with good accessibility to areas of employment and with good public transport facilities.
- 5.5 The scheme, for which outline planning consent has been secured, represents a comprehensive regenerating of the area to deliver a significant increase in residential density combined with other built development, such as shops, offices and other facilities, to create a new, high quality urban centre, focused around the Blackwall Reach DLR station. The regeneration will involve complete demolition of existing residential and commercial properties and redevelopment.
- 5.6 The proposed scheme will deliver up to 1575 residential dwellings within the red-line of the outline planning consent. The large majority of the site is in the freehold ownership of the Council and the Homes and Communities Agency (now GLA) as regeneration partners.

6. DECANT FOR REDEVELOPMENT

- 6.1 Key to facilitating the overall scheme is the delivery of vacant possession of the area of land required for the redevelopment.
- 6.2 The overall construction programme is around 10 years. Following the grant of planning permission the programme delivery of the Scheme will be carried out in phases in order that residents can be rehoused as the existing blocks are demolished and new blocks constructed, to avoid double decants for those wishing to remain in the area (including “option to remain” resident home owners).
- 6.3 The land within the red line area on the attached plan is divided into Five Phases as identified in the Development Agreement and outline planning consent, namely Phases 1a, 1b, 2, 3 and 4. Each phase is an integral part of the Scheme, without which the whole Scheme cannot be delivered. The early priority is to develop phase 1a to accommodate the decant process as set out in the Decant Policy. It is anticipated that work will commence on Phase 1a in 2013, and then the other Phases will follow the decant process.
- 6.4 In line with Government Guidance on the use of CPO powers the Council is seeking to secure vacant possession through voluntary agreement. There is clear evidence

available to demonstrate this, through correspondence and negotiations the council has had with various occupiers. Regrettably there are occasions when occupiers are unwilling to agree terms, this can be due to a variety of factors, ranging from opposition to a scheme to unrealistic expectations as to the level of compensation which may be payable.

- 6.5 When the CPO is made there may be a Public Inquiry and evidence of negotiations would be available to demonstrate the fact that the Council has used the CPO as a last resort. Council officers are committed to trying to achieve negotiated settlements with owners wherever possible
- 6.6 Negotiations will continue with remaining dwelling and business owners to seek to achieve a complete decant and vacant possession without recourse to the full execution of the proposed CPO. The CPO Resolution will not result in any reduction in efforts to continue negotiations to achieve vacant possession by voluntary sale. The CPO is, however, an important step to confirm the intention to acquire, and thus to enable the Scheme.
- 6.7 At the heart of the Scheme is the Robin Hood Gardens Estate, which at the time of writing includes 29 remaining residential property owners (leaseholders and freeholders of houses). Some 16 residential property owners have sold up voluntarily so far, making their own arrangements. Of the 29 dwelling owners 17 are resident and 12 are non-resident.
- 6.8 The council's approach to dwelling owners was set out in the February 2011 Cabinet Report and Appendices. Home-owners who were resident in their property ("resident" home owners), and whose homes are included in the development / CPO area, are to be enabled to purchase a new replacement home in the regeneration area.
- 6.9 The Council's standard offer to home owners is based on its legal duty, should it be required to rely on a CPO. Existing home-owners will be entitled to full compensation rights under the Compensation Code including:-
 - full market value (FMV) – based on agreement following valuation by the council and, if desired, an independent valuation commissioned by the leaseholder, which must be by an accredited surveyor / valuer, for which the Council will refund reasonable costs;
 - resident home owners (leaseholders or freeholders) receive an additional statutory home loss payment equivalent to 10% of the agreed purchase price (subject to a minimum of £4,700 and a maximum of £47,000); non-resident home owners receive a "basic loss" payment equivalent to 7.5% of the FMV (capped at £75,000);
 - reimbursement for reasonable legal and other relocation costs, upon production of verifiable receipts.
- 6.10 However the Council has recognised that some resident owners may be in genuine hardship and not feel able to purchase independently, or may have a predominant desire to remain in the immediate area once the redevelopment happens.
- 6.11 Therefore existing home-owners will be offered, where they are residents, the opportunity to move to a new replacement home within the development. This will be

built by the council's appointed RSL partner, Swan, on a like-for-like bed-size basis, and provided on flexible shared equity or shared ownership terms.

- 6.12 Resident home-owners opting to remain have a "Homeswap" shared equity option, for example, and will be able to invest the equity value of their present homes to acquire an equity stake in their new replacement home. They then automatically "staircase" by year, up to a full 100% leasehold ownership after seven years, without making any extra payment. It should be noted that the shared equity and shared ownership options for leaseholders offered by Swan apply to resident home-owners only, not to absent owners or commercial landlords.
- 6.13 Where home-owners do not wish to pursue the shared equity option the Council will acquire their interest; they will then be in a position to utilize such receipts and compensation to make their own future housing arrangements.
- 6.14 At the time of writing up to 12 of the 17 resident home owners may wish to take up the "option to remain" as described above; negotiations are well progressed for another 5 property owners to sell up, including 2 who are moving to Swan's nearby Streamlight development.
- 6.15 The council's Housing Regeneration and Asset Management Teams will continue to work closely with Swan to advise home-owners of their options, recognizing that acquisition by negotiation remains a priority alongside the precautionary CPO process. Owners are encouraged to seek independent valuation advice to assist in negotiations. Reasonable costs are reimbursed.
- 6.16 The Council's offer to owners / occupiers of business premises is also based on its legal duty, should it be required to rely on a CPO. Business occupiers (with a compensatable interest) will be entitled to full compensation under the Compensation Code including:
- full market value (FMV) – based on agreement or determination by a third party in the absence of agreement;
 - their reasonable relocation costs in moving to new premises;
 - a basic loss payment equivalent to 7.5% of the FMV capped at £75,000, and an Occupiers Loss payment equivalent to 2.5% of the FMV or £2.50 sqm GIA, whichever is the highest, subject to a cap of £25,000;
 - reimbursement for reasonable professional fees.
- 6.17 For owners of property, who are not in occupation, and hold the property as an investment they receive the standard offer above, but instead of their relocation costs they are reimbursed their reasonable the costs of reinvesting in an alternative property in the UK so long as they do so within one year.
- 6.18 The Council will need in the final resort, where it has not succeeded in negotiating a voluntary re-acquisition of leasehold interests, to utilise powers to be sought through Compulsory Purchase.

7. COMPULSORY PURCHASE

7.1 Section 17 Housing Act 1985 (the 1985 Act) provides a power for a local housing authority to acquire land for housing purposes. The types of situations envisaged by the legislation when such powers can be exercised include:

- acquisition of land for the erection of houses
- acquisition of houses or buildings which may be made suitable as houses, together with any land occupied
- acquisition of land to provide facilities in connection with housing accommodation, and
- acquisition of land to carry out works in connection with providing housing

7.2 Section 12 extends to the provision of recreation grounds, shops and other commercial premises and buildings serving beneficial purposes for the people who will occupy dwellings (for example community centres). Section 13 extends to the provision of streets roads and open spaces.

7.3 Land can be acquired under sections 17 of the 1985 Act either by agreement or compulsorily. The procedures to be followed and provisions concerning compensation are contained in the Acquisition of Land Act 1981, the Compulsory Purchase Act 1965 and the Land Compensation Act 1961.

7.4 Government Circular 06/04 sets out guidance to acquiring authorities in England making compulsory purchase orders.

7.5 Paragraph 17 of Circular 06/04 refers to the balance that has to be struck between ensuring a compelling case in the public interest and that the regeneration project sufficiently justifies interfering with the human rights of those with an interest in the land affected. It reads as follows:

"A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected."

7.6 Paragraph 19 of Circular 06/04 goes on to state:

"If an acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire, and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest... Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss."

7.7 Appendix E of Circular 06/04 provides guidance to local authorities considering using compulsory purchase powers under the Housing Acts. Paragraph 2 of Appendix E states that orders should not be made unless there is a compelling case in the public interest.

- 7.8 An alternative power the Council could use is Section 226(1) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act (as amended)) was amended by the Planning and Compulsory Purchase Act 2004 (the 2004 Act) to provide wider powers for local planning authorities to acquire land by compulsory purchase when the authority thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land.
- 7.9 Section 226(1A) of the 1990 Act (as amended) provides that an authority must not exercise the power under section 226(1) (a) "unless it thinks that the development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well being of their area" and be in the public interest. Land may also be acquired by agreement for the same purposes.
- 7.10 The essential requirement for use of compulsory purchase powers under section 226 of the 1990 Act (as amended) may be summarised as follows: That the Council is satisfied that the development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well being of their area.

8. WHEN COMPULSORY PURCHASE IS TO BE USED

- 8.1 An example of the circumstances in which CPO may be used by relevant authorities is summarised as follows:
- To unlock situations where a scheme is being blocked by an owner (or owners) unwilling to dispose of property either at all or only at a price considerably in excess of market value a ransom situation
 - To ensure effective negotiations for land assembly where there is a multiplicity of ownerships and absent landlords
 - Where there are unknown owners
- 8.2 The guidance in Circular 06/04 states that where possible specific powers (e.g. the Housing Act 1985) should be used rather than the more generic power under the act. It has been determined the reasons for acquisition fall within the Housing Act 1985 and the CPO is to be made under the powers under this Act
- 8.3 People affected by the CPO have rights to object, to be heard at a public inquiry and receive compensation.

9. ESSENTIAL REQUIREMENTS FOR USE OF COMPULSORY PURCHASE

- 9.1 The essential requirement for use of compulsory purchase powers under section 17 of the 1985 Act may be summarised as follows:
- That the Council is satisfied that acquisition will achieve a quantitative or qualitative housing gain

10. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 10.1 In July 2009, Cabinet agreed that £13 million be allocated, over a three year period, to fund the costs of land assembly and decants in respect of the Blackwall Reach Development and the Woolmore Street Medical Centre. This was in addition to the £1.5 million capital receipt that had already been recycled into the scheme under the conditions of the disposal of the St Mathias site to the Homes and Communities Agency (HCA).
- 10.2 Funding for the project was allocated from a variety of sources, predominantly capital receipts, and following total expenditure of £5.82 million to 31 March 2012, £8.68 million remains set aside to fund the project.
- 10.3 It is now proposed to include additional property interests in a Compulsory Purchase Order to assist the site assembly process, the proposed CPO area being shown in Appendix 1 of this report. This area includes additional land interests that were not included within the original properties covered by the July 2009 report but costs should be contained within the budgetary provision already set aside. The CPO mechanism is being implemented now to take effect should the acquisition programmes not succeed in acquiring all of the appropriate property interests. It should be noted that the CPO process is a last resort, and negotiations with land owners will continue. However, arranging for these back-up procedures to be put in place now will reduce any subsequent delays in the regeneration programme that will arise if agreements cannot be reached with individual owners.
- 10.4 The Council is working in partnership with the Greater London Authority (GLA), which has taken over the responsibilities of the Homes and Communities Agency, and Swan Housing Group on the Blackwall Reach project, but as the major land holder, the Council is leading the CPO process. Swan Housing Group is contractually committed to contribute £250,000 towards any legal costs involved in the CPO process.
- 10.5 As mentioned in paragraph 10.3 above, costs are expected to be contained within the provision already set aside by Cabinet in June 2009, although there is a risk that costs could increase as negotiations continue with property owners. Robust financial modelling has been carried out for the entire development programme, with the support of Swan Housing Group, and it is anticipated that overage will be generated on the private sales that are required to cross-subsidise the public sector regeneration element within the area. These higher than anticipated sales proceeds will be recycled into the scheme and would mitigate any risk involved in the project costs.

11. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

- 11.1 The Council has the power to make a CPO under sections 17 of the Housing Act 1985 (as amended). This may be done to assemble land for housing and ancillary development, including the provision of access roads; to bring empty properties into housing use; and to improve sub-standard or defective properties or to facilitate the carrying out of development, redevelopment or improvement on or in relation to the land involved. However, this must promote the economic, social or environmental well-being of an area and be in the public interest.

- 11.2 A CPO can be used to assist a developer (in this case a housing association). Since this deprives people of their property against their will, it is always the last resort and should be preceded by vigorous attempts to buy the land by agreement.
- 11.3 Depriving people of their property is a serious step and is not to be taken lightly. In this case the inclusion of specific properties in the proposed CPO and the formal making of the Orders are proposed to be delegated to the Corporate Director of Development and Renewal. The properties involved and the circumstances in which the CPOs will be made (if needed) have been set out for members. This is a specific type of order to meet a particular but common circumstance. The Council's Constitution provides for this broad delegation of decision making in circumstances, which include the present proposals.
- 11.4 Whenever a CPO is made, it is necessary to carry out a "balancing exercise" to judge whether it is in the public interest to make a CPO in view of the harm done to the interests of the individual. Against this should be placed the benefit of improved housing and amenities for the estate and the benefit to the well-being of the community gained by the scheme. The impact of this harm is lessened by the existence of rights of objection and a statutory compensation regime which includes the payments above the market price to compensate for the involuntary nature of the process. This test is needed to be looked at now in general terms and, will be repeated by the Corporate Director in each case when the CPO is made, and will thereafter be subject to scrutiny by the inspector if there is a public inquiry. In a similar CPO, the inspector found that on the public interest test, the Council's case was "compelling", but each case requires its own scrutiny.
- 11.5 The acquisition of land for housing development is an acceptable use of compulsory purchase powers, including where it will make land available for private development or development by Housing associations. Section 17(4) of the 1985 Act provides that the Secretary of State may not confirm a compulsory purchase order unless he is satisfied that the land is likely to be required within 10 years. It should be noted that the Secretary of State would not normally regard compulsory purchase as justified where development will not normally be completed within 3 years of actual acquisition of the land which may be in phases.
- 11.6 It is not a pre-requisite that the local authority must have a property interest of its own in the proposed order land (i.e. it does not have to carry out the proposed development itself).
- 11.7 When applying for confirmation of a compulsory purchase order made under these provisions the authority should include in its statement of reasons for making the order information regarding needs for the provision of further housing accommodation in its area. This information should normally include total number of dwellings in the district, unfit dwellings, other dwellings in need of renovation and vacant dwellings; total number of households and the number for which, in the authority's view, provision needs to be made. Details of the authority's housing stock, by type, may also be helpful.
- 11.8 The acquisition of land designed to facilitate a development that will promote the economic, social or environmental well-being of an area is an acceptable use of compulsory purchase powers under the planning legislation.
- 11.9 When applying for confirmation of a compulsory purchase order made under the planning legislation the authority should include in its statement of reasons for making the order information concerning how the development will achieve the

promotion of one or more of what are termed the well-being objectives. Evidence has to be provided that shows how the development will deliver the desired outcomes and why the land in question is required.

12. HUMAN RIGHTS IMPLICATIONS

12.1. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way that is incompatible with the European Convention on Human Rights. Various convention rights are likely to be relevant to the Order, including:

- **Entitlement to a fair and public hearing** in the determination of a person's civil and political rights (Convention Article 6). This includes property rights and can include opportunities to be heard in the consultation process.
- **Peaceful enjoyment of possessions** (First Protocol Article 1). This right includes the right to peaceful enjoyment of property and is subject to the State's right to enforce such laws, as it deems necessary to control the use of property in accordance with the general interest.
- **Right to respect for, private and family life**, in respect of which the likely health impacts of the proposals, will need to be taken into account in evaluating the scheme (Convention Article 8).

12.2 The European Court has recognised that "*regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole*". Both public and private interests are to be taken into account in the exercise of the Council's powers and duties as a local planning authority. Any interference with a Convention right must be necessary and proportionate.

12.3 The Council is therefore required to consider whether its actions would infringe the human rights of anyone affected by the making of the CPO. The Council must carefully consider the balance to be struck between individual rights and the wider public interest. It is considered that any interference with the Convention rights caused by the CPO will be justified in order to secure the social, physical and environmental regeneration that the project will bring. Appropriate compensation will be available to those entitled to claim it under the relevant provisions of the national Compensation Code.

13. ONE TOWER HAMLETS CONSIDERATIONS

13.1 This scheme will contribute to One Tower Hamlets objectives. The three objectives are to reduce inequalities; ensure community cohesion; and, strengthen community leadership.

13.2 On reducing inequalities, the new scheme proposed will lead to an increase in affordable housing on the site. The scheme will also lead to new socio-economic infrastructure for the area i.e., new health, community and retail facilities that will improve community well-being for local residents.

13.3 On ensuring community cohesion, the council is working with community representatives to facilitate the regeneration project and minimise disruption.

14. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 14.1 There are three key sustainability benefits to this project. Firstly, it is planned that all the new residential development will meet a minimum standard of Code for Sustainable Homes Level 4, which is higher (and better) than the standard being delivered elsewhere in London. There may be scope to deliver a higher standard in the latter stages of the project. Overall, the scheme will also seek to facilitate better approaches to energy conservation and recycling of waste.
- 14.2 Secondly, a key element of the sustainability agenda is using land in urban environments to maximum effect. This both maximises the value of the land itself and in strategic planning terms, reduces pressure to build on greenfield sites. Issues relating to the effective use of land are set out in the efficiency statement.
- 14.3 Thirdly the proposals involve the development of a high quality environment that will encourage bio diversity as well as providing recreation space and amenity.

15. RISK MANAGEMENT IMPLICATIONS

- 15.1 A high risk relates to achieving vacant possession of Phase 1b by 2013, ensuring that all tenancy, leasehold and freehold interests in the site are secured.

16. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 16.1 The regeneration and redevelopment of the area will reduce the current problems of high incidence of crime and anti social behaviour deriving in part from the poor physical condition of the current housing and environment by improving the social economic and environmental well being of the local residents.

17. EFFICIENCY STATEMENT

- 17.1 As indicated above the Council is working in partnership with GLA and Swan. Swan will contribute £250,000 towards any legal costs involved in the CPO process. As described in paras. 10.3 – 10.5 above, costs are expected to be contained within the provision already set aside by Cabinet in June 2009. Robust financial modelling has been carried out and it is anticipated that overage will be generated on the private sales which will help mitigate any risk involved in the project costs. The expenditure related to land assembly and CPO is essential to help deliver the overall scheme and its associated benefits.

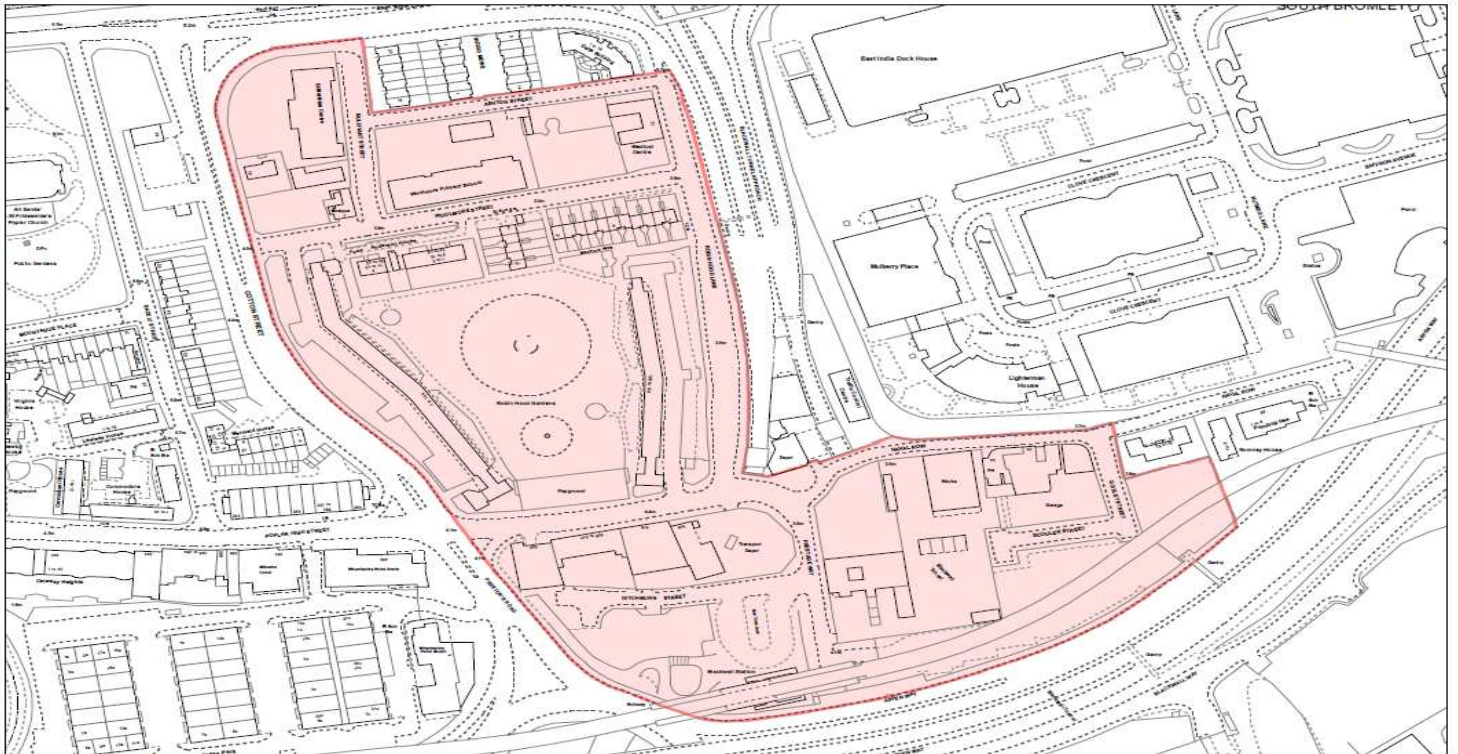
18. APPENDICES

Appendix 1: Map showing Blackwall Reach CPO Area

Local Government Act, 1972 Section 100D (As amended)
List of “Background Papers” used in the preparation of this report

Brief description of “background papers”	Name and telephone number of holder and address where open to inspection.
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Appendix 1- Map Showing Blackwall Reach CPO Area



London Borough of Tower Hamlets

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Land to be Acquired 1:2,146 @ A4



0 40 m



CPO Report to the Secretary of State for Communities and Local Government

by Clive Hughes BA (Hons) MA DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 12 August 2014

TOWN AND COUNTRY PLANNING ACT 1990

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

ACQUISITION OF LAND ACT 1981

The London Borough of Tower Hamlets (Blackwall Reach) Compulsory Purchase Order 2013

ACQUISITION OF LAND ACT 1981

Application for Certificate pursuant to section 19(1)(aa) and section 19(1)(a) in respect of an area of open space within the Blackwall Reach CPO

Inquiry held on 11 to 12 December 2013; 23 to 25 April; 29 April to 2 May; 7 to 9 May; 13 May; 20 May; and 22 May 2014

Inspections were carried out on 10 and 13 December 2013; and 13 May 2014.

File Refs: NPCU/CPO/E5900/71837 and NPCU/RARE/E5900/71939

File Ref: NPCU/CPO/E5900/71837
Blackwall Reach, London E14

- The Compulsory Purchase Order was made under section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 by The London Borough of Tower Hamlets on 5 March 2013.
- The purposes of the Order are to facilitate the delivery of a comprehensive redevelopment of the Blackwall Reach area including the delivery of a significant amount of new housing.
- When the Inquiry opened there were 7 remaining objections. Four objections were subsequently withdrawn.

Summary of Recommendation: That the Order, with modifications, be part confirmed and part confirmed in stages.

File Ref: NPCU/RARE/E5900/71939
Blackwall Reach, London E14

- The application for a Certificate pursuant to Section 19(1)(a) and Section 19(i)(aa) of the Acquisition of Land Act 1981 were made by the London Borough of Tower Hamlets on 18 March 2013.
- The purpose of the Certificate is to allow the London Borough of Tower Hamlets to compulsory purchase land which is designated Millennium Green Land.
- When the Inquiry opened there were 2 remaining objections. Both objections were withdrawn during the Inquiry.

Summary of Recommendation: That the Certificate be issued.

Procedural Matters and Statutory Formalities

1. The Inquiry sat for a total of 14 days. The Inquiry opened on 11 December 2013 for 2 days but unfortunately then had to be adjourned until 23 April 2014 due to the sudden illness of a key witness for the Acquiring Authority (AA). Upon resumption the Inquiry sat for a further 12 days. The Inquiry was held concurrently with an Inquiry into two Stopping Up Orders in respect of land within the Order Lands. That Inquiry is the subject of a separate Report to the Council. I carried out unaccompanied site visits to the Order Lands and the surrounding area on 10 and 13 December 2013 and on 12 May 2014. On 13 May 2014 I carried out an accompanied visit to the Order Lands and other sites referred to at the Inquiry, with representatives of the AA and the Arvin Group of Companies (Arvin), including visiting the premises of Arvin. The itinerary for this visit is at Document DOC12.
2. There were originally 8 statutory objections to the Compulsory Purchase Order (CPO) and 3 objections to the section 19 Certificate (s19 Cert). Prior to the opening of the Inquiry, 1 objection (Gerald Eve) to the CPO and 1 objection (BSkyB Telecommunications) to the s19 Cert were withdrawn.
3. During the adjournment, the following further objections were withdrawn:
 - CPO – Natural England (letter dated 10 December 2013 - Document DOC1)
 - CPO – Jeffrey Lewis (letter dated 31 March 2014 - Document DOC5)
 - S19 Cert – Natural England (letter dated 10 December 2013 - Document DOC1)
 - S19 Cert – BSkyB (email dated 13 February 2014 - Document DOC4).

4. During the course of the resumed Inquiry the following objections were withdrawn:
 - CPO - Mohammed Aziz (letter dated 1 May 2014 - Document AZIZ4)
 - CPO - Transport for London (TfL) (letter dated 30 April 2014 - Document DOC8), albeit that the withdrawal is conditional upon various modifications to the Order. These modifications have been agreed by the AA.
5. By the close of the Inquiry, therefore, the following objections remained outstanding:
 - CPO - (4) Arvin; UK Power Networks; National Grid; and TfL.
 - S19 Cert - (0) None.
6. At the Inquiry the Council confirmed that all of the statutory formalities had been complied with. There was no suggestion from any objector or anyone else present that the CPO is not legally correct or is otherwise flawed.
7. Prior to hearing opening submissions, two separate applications were made. The first application (Document CD6 - F1) was made on behalf of Arvin (CPO Objector No. 1). This application was made in writing (Document CD6 F1) and was an application for (1) Issue of summons pursuant to s250(2) *Local Government Act 1972* and/ or (2) Adjournment pending determination of EIA/ FOIA appeals by the Information Commissioner. The applications concerned the Principal Development Agreement (PDA) of 19 April 2011 (Document CD6 - F4).
8. Briefly, Arvin's case was that they had sought sight of this document since July 2012 but its disclosure was refused. Disclosure was again sought following the making of the CPO; the PDA is referred to in the Statement of Case (Document GD8). Following much chasing Arvin was provided with a heavily redacted copy of a document that purported to be the PDA. It is normal in High Court litigation for documents that are relied upon to be required to be disclosed. The logic for disclosure is clear as litigants should not be able to rely on cherry-picked extracts of documents without revealing their full terms and true effect. Depriving the decision maker of the context of a document might cause confusion or mislead. The unfairness to Arvin is clear if the Secretary of State is being asked to take account of a document that the AA says can satisfy him as to the implementability of the scheme while key clauses, which may alter the whole sense of the document, are being covered up. Unless the Secretary of State makes the decision on the basis that there is no PDA, it was alleged that there would be unfairness to Arvin.
9. Given the nature of Arvin's objection to the CPO, it is essential for Arvin and the Secretary of State to understand those sections of the PDA that deal with how the phased development would proceed should the CPO not be confirmed in full or to understand the funding and viability tests. It is probable that the PDA sets out what would happen in the event that a re-think of Phase 4 of the Order Scheme was required; this information should be made available. It would be prejudicial to Arvin for the Secretary of State to be left with a lingering doubt as to what would happen to the balance of Phase 4 if the Arvin land was to be excluded. The extent of the redactions makes the document unusable.

10. Arvin neither wants nor needs to see genuinely commercially sensitive information. However, having asserted that the PDA is in place, it would be unfair for the AA to hide behind the cloak of alleged commercial confidentiality to claim that other parts of the PDA may not be seen and, at the same time, claim that Phases 2 and 3 and the balance of Phase 4 could be jeopardised.
11. If further disclosure of the PDA is not forthcoming, then the Secretary of State is invited to conclude that each phase is independently viable, including Phase 4 without the Arvin land; and that the balance of Phase 4 will proceed even if the Arvin site is excluded.
12. The best person to decide is the Information Commissioner; the Inquiry should be adjourned pending his determination. The issue is whether the Secretary of State can be confident that the PDA does what it says or whether objectors should have the right to probe further. Arvin requested the disclosure of the document under s250(2) of the *Local Government Act 1972*.
13. The AA's response was that the onus is upon the AA to demonstrate a compelling case in the public interest; the risk of not disclosing the full document lies with the AA. Attention was drawn to paragraph 16(iii) of Appendix A to Circular 06/2004 *Compulsory Purchase and The Crichel Down Rules* (the Circular) which says that "a general indication of funding intentions ... will usually suffice ... a reasonable prospect that the scheme will proceed". The Secretary of State does not necessarily require every last jot of information.
14. In this case planning permission is in place. PDAs can, and do, change and the Inquiry should not get bogged down in the details of an agreement. The Secretary of State requires a general indication of funding intentions; that is what the AA has provided. To the extent that witnesses have relied upon the PDA the relevant parts have been disclosed.
15. With regard to Arvin's specific objections to the CPO, these do not need the PDA. The only relevant part of Arvin's case relates to their concern that the AA might say that without Phase 4 there would not be enough money for Phase 3. That, however, is no part of the AA's case. The AA's position is that Phases 1-3 are viable with or without Phase 4. It is physically possible to build Phases 1-3 without Phase 4 although it is required for a comprehensive redevelopment. The AA has said that the omission of the Arvin land from the Order would have major implications for all of Phase 4, including the realignment of Prestage Way, bus turning area etc but this is a planning point. There are also neighbourliness considerations and good design to consider with a builders' yard retained in a residential area, but again this is a planning argument not a PDA argument.
16. Arvin's case, to seek disclosure of the full PDA has been looked at by those at the London Borough of Tower Hamlets (LBTH) and the Greater London Authority (GLA) whose job is to consider the *Freedom of Information Act* (FoI) requests and in their opinion there are good grounds to resist disclosure. There is the right of recourse to the Information Commissioner who is familiar with the tension between public interest and confidentiality issues.
17. I ruled on these applications that the Inquiry should proceed and that the AA should not be required to disclose the full PDA. This ruling was based upon my conclusion that any risk associated with the failure to disclose the full document falls on the shoulders of the AA. The onus is on the AA to make its case; if it

cannot do this without this document being disclosed, then the CPO would potentially fail, at least insofar as it relates to Phase 4 of the Order Scheme.

18. It is accepted by Arvin that there is a need to hide the commercially sensitive parts of the PDA. The AA says that only commercially sensitive information has been redacted. Without knowing what has been redacted it is not possible to determine whether it is all commercially sensitive and, in any event, I am not qualified to judge whether certain information is commercially sensitive or not. It is not clear how, or by whom, any determination on the disclosure of more, but not all, of the PDA could be achieved. The failure to disclose the PDA clearly reduces the weight that the document can carry; the amount of redaction is substantial and, as pointed out by Arvin, makes the document difficult to understand and impossible to be confident in. This is a risk for the AA. On this basis I concluded that the non-disclosure of the redacted parts of the PDA was not unreasonably prejudicial to Arvin's case.
19. The second application was made by Mr Mohammed Aziz (CPO Objector No 6). He argued that he had only received the bundle of documents a couple of weeks before the Inquiry opened. As a residential objector representing himself, he could not read and absorb all the documents in the time. He considered that his case could be prejudiced by his inability to absorb all the documents as thoroughly as he might. Given his job, it was not possible for him to read all the documents fully. The AA responded to the effect that while it had some sympathy with Mr Aziz due to the number of documents, the timetable for the Inquiry is set out in the Regulations. The bones of the AA's case had been available for some time and the evidence had all been produced within the statutory timetable. There were no exceptional grounds for adjourning the Inquiry.
20. I ruled on this application that as the AA had met its statutory timetable, the application for an adjournment was not reasonable and so it was not granted.

Background matters

21. An application for outline planning permission for the redevelopment of the whole of the Order Lands and including further land to the north west, was submitted on 3 January 2012. This application (Document CD5 E1) was approved on 30 March 2012 (Document CD5 E21). The development is described as "*alterations to and demolition of existing buildings, site clearance and ground works and redevelopment to provide:*

- *Up to 1,575 residential units (up to 191,510 sq m GEA – Use Class C3);*
- *Up to 1,710 sq m (GEA) of retail floorspace (Use Classes A1 – A5);*
- *Up to 900 sq m of office floorspace (Use Class B1);*
- *Up to 500 sq m community floorspace (Use Class D1);*
- *Replacement school (up to 4,500 sq m GEA – Use Class D1); and*
- *Replacement faith building (up to 1,200 sq m – Use Class D1).*

The application also proposes an energy centre (up to 751 sq m GEA), associated plant and servicing; provision of open space, landscape works and ancillary drainage; car parking (up to 340 spaces in designated surface,

podium, semi-basement and basement areas plus on-street); and alterations to and creation of new vehicular and pedestrian access routes.

All matters associated with details of appearance, landscaping, layout and scale and (save for the matters of detail submitted in respect of certain highway routes, works and/ or improvements for the use by vehicles, cyclists and pedestrians as set out in the Development Specification and Details of Access Report) access are reserved for future determination and within the parameters set out in the Parameter Plans and Parameter Statements."

22. The application was accompanied by a Deed of Planning Obligations dated 29 March 2012 (Document CD5 E19) pursuant to section 106 of the Town and Country Planning Act 1990 (the s106 Agreement) signed by the London Thames Gateway Development Corporation, the Mayor and Burgesses of LBTH, the Homes and Communities Agency and Swan Housing Association (Swan).
23. The development is indicated to be carried out in 5 phases (described as Phases 1a, 1b, 2, 3 and 4). The reserved matters for Phase 1a, which mostly lies outside the Order Lands, were submitted to LBTH and approved by the Council on 24 December 2012 (Document CD E25). This part of the development, which includes 98 flats, offices, community facilities and a replacement mosque, is now under construction. Also under construction is the new Woolmore Primary School, for which reserved matters were approved on 20 December 2012 (Document CD E24). The original school is still in use.
24. Conservation Area Consent was granted for the demolition of a building described as "a building adjacent to and on the east side of the Steamship Public House which is an unlisted building situated within the Naval Row Conservation Area." This consent was granted on 17 May 2012 (Document CD E21).
25. There are amendments to the Order that have arisen following negotiations between the AA and TfL (Documents DOC8 & DOC9). The main amendment involves the removal from the CPO (to the extent that they fall within the CPO) of the Blackwall Tunnel and TfL Plots numbered 88, 89 and 90. In addition, the following modifications in respect of Column 2 of Schedule 1, Table 1 are sought:
 - Plots 8, 9, 10, 11, 12, 13 and 15 to the "western" boundary of Robin Hood Lane are amended to refer to the "eastern" boundary of Robin Hood Lane;
 - Plot 81 is amended by the deletion of the wording "including the tunnel approach retaining wall along the western boundary of Robin Hood Lane";
 - Plot 106 is amended by the insertion of the wording at the end of the existing text the words "and any relating retaining walls of Aspen Way and of the Preston Road roundabout"; and
 - Plot 108 is amended by the insertion of the wording at the end of the existing words "excluding all those rights and interests owned by TfL in and relating to the Blackwall Tunnel and any related structure".
26. The AA requested the above minor modifications by letter submitted on 30 April 2014 (incorrectly dated 30 April 2013). The proposed modifications to the Order were submitted with the letter (Document DOC 10).

The Order Lands and Surroundings

27. The Order Lands are described in the AA's Statement of Reasons (Document GD9) and there are photographs of the Lands and the surrounding area in the Design and Access Statement (DAS) accompanying the outline planning application (Document E5). The aerial photograph on page 41 (identified as the application site) covers all the Order Lands. There are useful photographs taken within and around the Order Lands on pages 57-70 of the DAS. There are photographs of the Millennium Green in Appendix A to Niall McGowan's proof of evidence (Document LBTH4).

The main points are:

28. The Blackwall Reach Regeneration area comprises some 7.7ha of which the Order Lands have an area of about 6.6ha. The Order Lands are roughly "L"-shaped with the vertical and horizontal components of the "L" differing markedly in character. The whole of the land lies within an urban area that is more or less flat and is surrounded by very busy main roads.
29. The vertical, northern, component is predominantly residential with some 252 flats and houses. It is bounded by East India Dock Road to the north; the Blackwall Tunnel Approach to the east; Poplar High Street to the south; and Cotton Street to the west. In the centre lies the Millennium Green, a largely untended grassed mound with some trees. The housing is dominated by three substantial blocks of flats two of which, known as Robin Hood Gardens, are built in a concrete brutalist style and run north/ south either side of the Green. These blocks have a Certificate of Immunity from listing. A third block, Anderson House, lies to the north of the Green adjacent to 17 three storey terraced houses. To the north of this block lies Woolmore Primary School, within whose curtilage a replacement school is currently being built, and the site of the former North Poplar Mosque. A new Mosque is being built further north.
30. Also within this area, surrounded by the Order Lands but excluded from them, are a children's play area, a hard surfaced area for ball games, an area of open space and various footways. These surround the Millennium Green and are already in the ownership of the AA.
31. The horizontal, southern, component is predominantly commercial and much of the land appears to be under-utilised. This area is bounded by Poplar High Street/ Naval Row to the north; Aspen Way and an elevated section of the Docklands Light Railway (DLR) to the south and east; and Preston's Road and a roundabout to the west. Blackwall DLR station is sited immediately to the south. The area comprises several small commercial premises including car and motorcycle repairs; car parking lots; hand-washing facilities for cars; a temporary Mosque; a solicitor's office; a chair manufacturer; and a bus stop/ bus stand with drivers' facilities. The area also includes the substantial (0.43 ha) site occupied by Arvin which is in use for offices, storage, parking, distribution and manufacturing purposes.
32. The two tunnels that together comprise the Blackwall Tunnel run under this part of the Order Lands, surfacing immediately to the north of Poplar High Street/ Naval Row. The associated buildings are outside the Order Lands. The Steamship Public House, fronting Naval Row, is wholly surrounded by the Order Lands but is excluded from them. This public house, together with the road in

front and the adjoining building and road to the east, lies within the Naval Row Conservation Area.

33. Most of the buildings and land within the Order Lands appear to be run down and in a poor state of repair. There are exceptions to this, including the Woolmore Primary School, houses in Mackrow Walk and the premises occupied by the Arvin Companies. Notwithstanding these exceptions, however, the area is of generally poor appearance. This is in stark contrast with much of the surrounding area where regeneration has taken or is taking place.
34. The Order Lands are largely isolated from the surrounding area by roads and the DLR. There is much recent development in the immediate area including Canary Wharf, the East India Commercial Precinct and new flats to the south of the DLR.

The Stopping Up Orders

35. The two Stopping Up Orders (SUOs) are the subject of a separate Report. They relate to highways that are located at opposite ends of the Order Lands. For ease of reference I shall refer to the relatively small SUO for Bullivant Street as the SUO(BS). The larger SUO, which relates to for Ditchburn Street and land south of Ditchburn Street, Prestage Way, Scoular Street and Robin Hood Gardens Estate is referred to as the SUO(DS). Plans for both SUOs are set out in Appendix D to the proof of Evidence of Euan Mackay (Document LBTH1).
36. The SUO(BS) relates to a short section of highway that would be relocated a few metres to the west to provide access for the new development in Phase 1a. The SUO(DS) is quite fragmented and involves three separate roads and adjoining land. The entire length of Ditchburn Street would be stopped up to allow for the creation of a new square surrounded by residential blocks with shops and restaurants at ground floor level. The square would allow greater connectivity. The road is a cul-de-sac that serves adjoining businesses. The AA intends to acquire these adjoining developments making the road unnecessary.
37. Prestage Way would be stopped up. The Council is seeking to acquire both business premises, including Arvin, which front this road by negotiation and by compulsory purchase. The road also provides access to Ditchburn Street and there would be a need to provide alternative facilities for TfL buses. The land would be used for new residential towers facing a new public square. The AA argues that the benefits of the Order Scheme would outweigh the harm caused to highway users.
38. No objectors to either SUO gave evidence at the Inquiry. If the objection to the CPO by Arvin succeeds, however, the SUO(DS) would have implications for the use of one of the accesses to their premises.

The section 19 Certificate

39. The land the subject of the application pursuant to sections 19(1)(aa) and 19(1)(a) of the 1981 Act relate to the Millennium Green at Robin Hood Gardens. The Millennium Green Trust Land is vested in the Trustees of Robin Hood Gardens Millennium Green. There were 245 such greens created in cities, towns and villages across England to celebrate the turn of the millennium. They are funded in part by the National Lottery and Natural England. This Green comprises 7,398 sq m of public open space. The applications have been made as no agreement

has been possible with the Trustees who, according to the unchallenged evidence of the AA, have chosen not to participate in this process.

40. Concerning the acquisition of land under s19(1)(a), the AA is seeking authority to acquire that part of the Millennium Green Trust land upon which built development will be constructed. The land would be released from its use as public open space and an equivalent area of new public open space will vest in exchange with the Trust. Under the terms of s19(1)(a) the exchange land must be provided to the owner of the open space which is to be acquired.
41. Concerning the acquisition of land under s19(1)(aa), the AA is seeking to acquire the remainder of the Millennium Green Trust land to secure its preservation or improve its management. The overall outcome is that if the application is successful, the ownership of the new central park would be divided with the Council owning the main central area and the exchange land around the edges owned by the Millennium Green Trust.
42. All three objections to the s19(1) certificate application have been withdrawn.

The Case for the London Borough of Tower Hamlets Council as Acquiring Authority

The Statutory Criteria

43. Under s226 of the 1990 Act a local authority may acquire compulsorily land within its area provided it "thinks the acquisition will facilitate the carrying out of development/ redevelopment or improvement on or in relation to the land" or that the "land is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area; and it thinks the development, redevelopment or improvement will contribute to the achievement of the promotion or improvement of one or more of the three "well-beings" – economic, social or environmental".
44. In this case the Order Lands are all within LBTH and the AA is satisfied that the Order will facilitate the carrying out of development in relation to the land. It would not be possible to develop the Order Lands in accordance with the planning permission without the control that the CPO would provide.
45. The AA considers that the Order would contribute towards the achievement of all three of the well-beings, although for the purposes of s226 it is necessary to contribute to the achievement or improvement of only one of them. Arvin does not dispute the AA's conclusions on the well-beings; it only disagrees with the extent to which the Order would improve the economic well-being of the area.
46. Economically, the intensification of housing proposed in the Order Scheme would increase expenditure in the local area. The site is adjacent to a DRL station and has access to 7 bus routes. It is only a 10-minute journey to Bank and the City and a 15-minute walk to employment opportunities at Canary Wharf. The exact impact on employment in the area is disputed by Arvin, but there would be jobs created during the construction phase and in the new retail and office facilities.
47. Socially, the Order Scheme will deliver up to 1,575 dwellings of which 52% (by habitable rooms) or 44% (by unit numbers) would be affordable. It will enable the expansion of the Woolmore Primary School from a single to a three form entry school to meet an identified shortfall; create a new public square and

neighbourhood centre; a replacement Mosque; a community centre; and the improvement of the Millennium Green. Residents would enjoy an improved quality of life with high quality homes in a safe and pleasant environment with improved connections and public transport. This will improve the social well-being of the area, a fact not disputed by Arvin regardless of the question of a five-year housing land supply or meeting housing targets.

48. Environmentally, the northern part of the Order Lands is dominated by Robin Hood Gardens Estate, a brutalist housing development generally recognised as a failed example of the architectural aspirations of the time. The dwellings suffer from poor thermal and acoustic attenuation and there are structural problems. The cost of bringing this estate back to a good standard has been estimated at £20m but even then this would not resolve its basic design problems. The density is very low compared to the London Plan density matrix.
49. The southern part of the Order Lands is a low rise, low density and low grade commercial area occupied by various businesses, including Arvin. The buildings here are of no particular architectural merit and extensive storage is not an efficient use of land which has good public transport connections and is becoming surrounded by high-rise residential developments.
50. By making more intensive use of land adjacent to a public transport interchange, and in an area with a mix of shops, community facilities, faith buildings and public open space, the Order Scheme will enable a larger population to live within easy reach of major urban centres. This will result in more sustainable patterns of travel for work and everyday life. Blackwall is an area capable of accommodating high density residential development; it needs to do so to accommodate London's growing housing needs. It is not disputed by Arvin that the Scheme, including Phase 4, will contribute to the environmental well-being of the area. The AA considers that the benefits of the Order Scheme will accrue to other parts of the Borough outside the Order Lands.
51. In addition to the statutory tests, Circular 06/2004 identifies other matters to which the Secretary of State will have regard. These are considered below.

Whether the AA has a clear idea as to how it intends to use the land

52. The AA has a very clear idea as to the manner in which it intends to develop the Order Lands. This is evidenced by the planning framework including the *LBTH Core Strategy 2010* (CS) (Document CD B14) and the *Managing Development Document: Development Plan Document 2013* (MDD DPD) (Document CD B15). Outline planning permission for its redevelopment was granted in 2012 and the AA, together with the GLA, has entered into an agreement with Swan to deliver the Order Scheme. The redevelopment of Phase 1a has commenced.
53. While the CPO is not tied to the delivery of a scheme in accordance with the planning permission, this is common to most CPOs. The AA has gone significantly further than guidance requires; this requirement is met.

Whether the scheme is in accordance with the development plan, is set within a clear strategic framework which has been the subject of consultation and is founded on an appropriate evidence base, and fits in with the adopted planning framework

54. The proposals have been developed against the backdrop of a suite of development plan and other policies and are in accordance with them. At a

- strategic level, Policy 1.1 of the *London Plan* (LP) identifies east London as a priority to address the need for development. The site lies within the Lower Lea Valley Opportunity Area where Policy 2.13 says that development proposals should seek to optimise residential and non-residential output and densities. Blackwall Reach lies within an Area for Regeneration as identified in Policy 2.14 of the LP. In accordance with Policy 3.3, the Order Scheme will make a substantial contribution to the pressing (described as “desperate” in paragraph 3.13 of the Plan) need for more homes in London. The Order Scheme will deliver the maximum reasonable amount of affordable housing in line with Policy 3.12.
55. At a Borough level, Figure 24 of the CS identifies Blackwall as a location that is appropriate for “very high” housing growth, needed to meet the significant housing challenges that the Borough faces. Policy SP02 identifies Blackwall as an area for housing regeneration and the *Blackwall Reach Regeneration Project* (BRRP) is specified as one of the routes for delivering new housing. The CS “Vision for Blackwall” identifies this as an area that will undergo transformation through housing growth and investment. The Order Scheme will deliver the key components. The MDD DPD allocates the site for a comprehensive mixed use development including housing, primary school, open space, commercial floorspace and other compatible uses. The Order Scheme delivers all these.
 56. Both the CS and the MDD DPD make reference to the *Blackwall Reach Regeneration Framework 2008* (BRRF) (Document CD2 B16). The Order Scheme will deliver its key objectives; Arvin confirmed it to be a good masterplan.
 57. Concerning commercial floorspace, the BRRF suggests that the site is capable of accommodating 10-15,000 sq m. However, the MDD DPD says that development should recognise the latest supplementary guidance; it does not require slavish adherence to it. In any case the BRRF is not part of the development plan and the figures are indicative of what the site is capable of accommodating; this is set out at paragraph 2.7.4. In these circumstances the Order Scheme does not deliver anything that might put it in conflict with the BRRF. The land the subject of the BRRF was larger than the Order Lands as it involved decking over the bores of the Tunnel, a part of the original proposals now deemed unviable. Not only was the commercial floorspace reduced, but the number of dwellings reduced from an estimated 2,500-3,000 to a maximum of 1,575.
 58. The BRRF does not require any particular housing/ employment floorspace ratio. The original BRRF aspirations included commercial units under the DLR; that is now known to be unacceptable to the DLR. The Order Scheme still includes some commercial floorspace (about 2,600 sq m); this is more than a token amount. While there is a desire to achieve some commercial floorspace within the Order Lands, the site is more important for its housing potential. The CS does not require any commercial floorspace within the Order Lands over and above that situated around the new public square.
 59. It is also relevant that there are other employment opportunities in the immediate area with the Blackwall Local Office Location at East India Docks adjacent to the site; land identified at Chrisp Street and Poplar Business Park for employment floorspace in the CS and MDD DPD; and Canary Wharf within easy walking distance. The relocation of the Council offices away from East India Docks would leave the offices available for other occupiers. The Government’s

changes to permitted development rights for office conversions goes to demonstrate the relative importance of office and residential uses.

60. The BRRF provides no support for the retention of Arvin as the preferred employment uses for Blackwall Reach are B1 uses. Regardless of whether some of Arvin's equipment falls within B1 or B2, much of their site is used for storage (B8) use. The fact that the Order Scheme does not include Arvin involves no conflict with the development plan allocation for the site.
61. The other relevant policy relating to whether the Order Scheme fits with the adopted planning framework is Policy DM15 of the MDD DPD. The first paragraph protects employment land, not businesses. In any case, and as set out in paragraph 15.4, this paragraph does not apply to site allocations such as Blackwall Reach. While this was added after the planning application was determined, the Secretary of State should assess this CPO based on policy as it stands today. Paragraph 2 of the policy requires suitable alternative sites for displaced businesses to be found in the Borough. However, the Arvin site will not be required until 2018 at the earliest and there is every likelihood that a suitable site will be identified within that four year period.
62. It is clear that the proposals comply with the development plan as a whole; the broad principles are in accordance with the LP, the CS and the MDD DPD. It is accepted that, in hindsight, some of the aspirations of the BRRF were not deliverable, such as building over the Tunnels. However, the development plan documents, CS and MDD DPD have been through the EiP process and the Inspectors have accepted that they were supported by an appropriate evidence base. The Order Scheme therefore fits with the adopted planning framework.

The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the area's economic, social or environmental well-being

63. The proposed purpose would make a very significant contribution to all three well-beings. Only Arvin has taken issue with this, saying that the potential for the scheme to generate new employment has been overestimated and that insufficient weight has been given to the loss of employment on their site. Employment falls within economic well-being; Arvin accepts that the scheme meets the social and environmental tests. It also has to be borne in mind that employment is only one component of economic well-being.
64. In the Statement of Reasons, the AA asserts that the development will lead to an increase in employment. However, that is only a relatively minor aspect of the proposals as the CPO is being driven by the contribution it would make towards meeting the Borough's housing needs in a way which transforms the environmental quality of the area. Blackwall Reach is identified in the development plan as a strategic location for housing, not employment. It also needs to be seen in context as, for example, some 325 additional jobs are expected to be created as a result of the redevelopment of the adjoining Poplar Business Park.
65. It is clear that the Order Scheme will result in very substantially more employment and substantially greater expenditure in the Borough than is currently provided or supported by Arvin.

The potential viability of the Order Scheme, and whether the AA can show that all the necessary resources are likely to be available to achieve its ends within a reasonable timescale

66. When planning permission was granted, the Order Scheme was the subject of a viability assessment for the purposes of determining the appropriate level of affordable housing. The assessment concluded that the scheme was viable on the basis that although the return available to Swan would be less than the market standard, Swan was prepared to proceed on the basis that the regeneration benefits would lead to higher residential sales values over time. The assessment was independently reviewed by BNP Paribas who agreed with it. A significant proportion of the Order Lands is already owned by LBTH (36%) and the GLA (20%), while a further 24% is highway. The LBTH and the GLA are prepared to make their land available to Swan at nil value in return for a share in the overage in order to achieve the consented level of affordable housing.
67. The original viability assessment has been updated by GVA Grimley with the conclusion that the current housing market is far healthier than at the time of the assessment. This has been reviewed on behalf of Arvin who concluded that the scheme is viable, with or without Phase 4. If anything it has become more viable since planning permission was granted. Swan are contractually committed to delivering the Order Scheme and are satisfied it is viable. Swan has a track record in the development and management of sites for affordable housing; it has experience of the local market with a presence in the Borough.
68. Swan has commenced work on Phase 1a, which will comprise entirely affordable units to accommodate the decant from the Robin Hood Gardens Estate. This is not profitable on its own; Swan has a strong financial incentive to develop out the later phases. In the March 2014 Budget, Blackwall Reach was one of three regeneration projects named by the Chancellor as being eligible to receive part of an overall funding of £150m. LBTH has offered to enter an agreement to buy Arvin out at any time; funds are available to meet that commitment.
69. Concerning timescale, the development programme (Document LBTH10 Appendix B) sets out earliest and latest construction dates. To date it is taking place within the indicated periods. On this analysis, the latest that the Arvin land would be required is 2019; comfortably within the 6 year period from confirmation of the Order and well within the 10 year period referred to in paragraph 7 of Appendix E of the Circular. The 4 year construction period makes it impossible for the scheme to satisfy the last sentence of this paragraph as it could not be completed within 3 years of acquisition. However, this is not a statutory limitation. Phase 4 cannot proceed until it is all acquired as the bus loop needs to be provided.
70. The Secretary of State has been given a very clear indication as to how it is proposed to fund the Order Scheme; can be confident the scheme is viable; can see that the Scheme is already progressing and there is every prospect that it will proceed to completion (provided the Order is made); and can be satisfied that the Scheme and the acquisition will take place within a reasonable timescale.

Whether there are any impediments to implementation

71. Planning permission has been granted for the Order Scheme and Phase 1a is already well advanced. The only other significant impediments to development

would be removed if, at the point of confirming the CPO, the Secretary of State also issues the s19 Certificate. The SUOs could then be confirmed.

72. Arvin raised concerns about buses being able to negotiate the bend at the Naval Row/ Quixley Street junction and the insufficient width of Naval Row to accommodate cyclists and vehicles. However, the swept path analyses (Document LBTH2 Appendix 4) shows buses would be able to make the turn, although detailed design may necessitate the relocation of some parking spaces. Concerning Naval Row, the actual width of this was measured during the Inquiry and was shown to be wider than Arvin claimed. A dedicated cycle lane only needs to be 1.5m wide, not 2m as claimed. Buses would use the carriageway along with other traffic. The scheme is therefore not sub standard. It also has to be borne in mind that Naval Row is already part of TfL's Cycle Superhighway network despite having two-way traffic flows, on-street parking and no dedicated cycle lane. The Order Scheme would remove the two-way traffic and the on-street parking and would use the additional space to provide a dedicated cycle lane for west-bound cyclists. This represents a significant improvement in safety.
73. The AA argues that it is not necessary to narrow the footway on the northern side of Naval Row. However, if it decided to do this, and if Conservation Area Consent¹ is required for these works, there is no obvious reason as to why it should not be granted. The work would have no impact on the tree-lined walk on the top of the wall, the width of Naval Row would be unchanged, the listed wall would be retained, and the footpath on the northern side of the road could be narrowed and still retain sufficient width to ensure that wing mirrors of passing vehicles did not damage the listed wall.
74. There are no impediments to delivery. If there is any merit in any of the points raised by Arvin, they relate solely to Phase 4 so there is no reason as to why the CPO for the other phases should not be confirmed.

Whether the purpose for which the AA is proposing to acquire the land could be achieved by any other means

75. The objective is the comprehensive regeneration of the Blackwall Reach area; clearly this could not be achieved on any other site. The AA has given careful consideration to the retention of the Robin Hood Gardens Estate but rejected it on the grounds of cost, the quantum of housing it would deliver and the lack of environmental benefits. None of the remaining objectors consider that the buildings should be retained. The buildings are not listed and have the benefit of a Certificate of Immunity from listing. Its demolition, necessary for the development of Phases 2 and 3, is in the public interest.
76. The AA seeks to achieve this objective through the implementation of the 2012 planning permission. LBTH has sought to acquire all the land required to deliver the Order Scheme by agreement. The AA's efforts in this regard have been largely successful. However, there are still interests in the Order Lands that have not been acquired by negotiation. The purpose for which LBTH is proposing to acquire the land could not be achieved without the use of CPO powers. The response to the outstanding objection to the CPO by Arvin is considered below.

¹ The AA's evidence included reference to Conservation Area Consent. This has now been superseded such that planning permission may now be necessary.

Whether there is a compelling case in the public interest i.e. that there is "clear evidence that the public benefit will outweigh private loss".

77. In the opinion of the AA, there is a compelling case in the public interest which is sufficient to justify any interference with any rights under Article 8 of the *European Convention on Human Rights* (ECHR) or Article 1, 1st Protocol (Part 1, paragraph 16). In particular reference is made to the significant public benefits of the scheme as set out above. The response to Arvin's challenge to this assertion is set out below.

The Stopping Up Orders

78. The SUOs are the subject of a separate Report. Nonetheless, they have implications for the use of one of the accesses to Arvin and so it is necessary to give them consideration as part of this Report.
79. The AA argues that both the SUOs are necessary to facilitate the development. A number of the roads to be stopped up are relatively minor highways whose principal purpose is to provide access to land uses that would cease when the development takes place. In all other cases replacement highway would be provided on a different alignment.
80. At the Inquiry, Arvin submitted that, if their land is excluded from the CPO, this would have implications for the stopping up of Prestage Way. This matter was not raised with any of the AA's witnesses. In response, the AA submits that Arvin has an alternative access from Naval Row. If the Secretary of State is minded to uphold the CPO over the remainder of the Phase 4 land, the stopping up of Prestage Way would be necessary to facilitate the relocation of services required for Phase 1b of the Order Scheme.

The s19 Application

81. This application was originally objected to by BSKyB and Natural England (NE). The basis for BSKyB's objection was never clear as they have no apparatus beneath the Millennium Green. NE's objection was due to its concern about the potential liability of the original trustees of the Millennium Green Trust. Both these objections have since been withdrawn.
82. Nonetheless, the Secretary of State has an independent obligation to satisfy himself that the s19 tests are met. The principal open space is the Millennium Green within the Robin Hood Gardens Estate. It has an area of about 7,378 sq m. Its utility is compromised by a large grassed mound and it has not been properly maintained. While the Order Scheme would involve building on part of the Green, the Scheme proposes the replacement of 11,143 sq m of open space with 11,500 sq m of open space. There would also be a significant qualitative improvement in its design, layout and future management.
83. The Council would acquire the majority of the Green and it would be vested in a new Community Trust, funded by a £1m endowment from Swan and a proportion of the ground rents from the private and shared ownership dwellings. Day to day maintenance would be carried out by Swan. Ideally, all the open space would be under the control of the new Community Trust. However, part of the existing open space is needed to accommodate built development and so has to be acquired under s19(1)(a). The terms of this section require the provision of alternative open space which has to be vested in the party from whom the

existing open space is acquired. The exchange land, therefore, has to be vested in the Millennium Green Trust. The Council will continue to negotiate with them to bring all the open space under the management of the new Community Trust. There is every reason to hope that the trustees will come to an agreement.

84. The scheme would satisfy the statutory tests and the AA requests the Secretary of State to grant the application under s19 and issue the necessary certificate.

Conclusions

85. The scheme would bring about the transformational change to Blackwall which the LP and CS expect, encourage and require. It would make a major contribution to the housing needs of the Borough, and in particular to its need for affordable housing. It would create a new community focused around a neighbourhood centre with shops, community centre, public square, primary school and open space. In so doing it would improve the economic, social and environmental well-being of the area. The full benefits require the comprehensive redevelopment that has been signposted by the planning framework since 2007. Anything less than this would fail to optimise the site's potential and result in poor design and place-making, contrary to national and development plan policies.
86. It is clear to the AA that there is a compelling case in the public interest in bringing forward the whole of the BRRP, which significantly outweighs the impact on Convention rights under article 8 of the ECHR and/ or Article 1, First Protocol, and fully justifies the use of compulsory purchase powers.

THE OBJECTIONS TO THE CPO

Objector appearing at the Inquiry

This section contains the gist of the objections to the CPO made at the Inquiry

Objector Name: Arvin & Sons Ltd, Toffolo Jackson (UK) Ltd, Arvin Paving Ltd, Carrazzo (Resin Products) Ltd, Harry Grover (Decorations) Ltd, Arvin Roofing Ltd, ADP Estates Ltd [Arvin]

Plot Numbers: 113, 114, 115 & 116

Address: Prestage Works, Prestage Way, London E14 9QE

Interest: Lessees, occupiers

Case for the Objector (Documents GD1, AGC1-AGC16, DOC16-23, Series A-E)

87. Arvin objected to the CPO on the grounds that
- The Robin Hood Gardens Estate and surrounding area could be redeveloped and regenerated without the need to acquire the Arvin site;
 - The AA has not provided any justification for the loss of the employment hub and jobs which the site supports;
 - The AA has not justified its assertion that the acquisition of the site is in the public interest; it has failed to demonstrate that there is a compelling case in

the public interest. This is a well established business of long standing which provides employment;

- Arvin could develop the site themselves so the regeneration scheme can be achieved without the need to acquire it;
- The Council has not complied with the Circular and good practice as there has been no effective direct consultation while the AA has been promoting the outline planning permission and the CPO;
- No consideration has been given to the relocation of Arvin;
- No consideration has been given to the loss of jobs; and
- The compulsory acquisition of the Arvin site would be a breach of the ECHR.

The statutory tests

88. The Secretary of State must be satisfied that there is a compelling case in the public interest that outweighs the private loss that would be suffered by Arvin; that the AA will be able to complete the acquisition within a reasonable timescale; that the AA can fund the acquisition; and that the AA has taken appropriate steps to use compulsory purchase powers only as a last resort.
89. The Order is made pursuant to s226 of the Act. Specific guidance is given in paragraph 16 of Appendix A of the Circular which lists four specific matters which the Secretary of State is expected to consider when reaching a decision on whether to confirm a CPO. These include (iv) which relates to whether the purpose for which the AA is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land.
90. Appendix E of the Circular refers to s17(4) of the Housing Act 1985. This suggests that a CPO should not be confirmed unless the Secretary of State is satisfied that the land is likely to be required within 10 years. A CPO made under the Housing Act powers would not normally be justified unless development would be completed within 3 years of acquisition. Paragraph 2 of appendix A of the Circular refers back to Appendix E, which shows that the guidance provided in that Appendix is just as applicable to compulsorily purchase land under s226 of the 1990 Act as it is to powers exercised under s17 of the Housing Act.

The scheme

91. The historical evolution of the Blackwall Reach scheme is set out in Document AGC1. Outline planning permission for the redevelopment of the Order Lands was granted on 30 March 2012; the CPO was made on 5 March 2013.

The alleged justification

92. The case for the AA was opened on the basis that there is "a significant opportunity for transformational change in this highly accessible, but currently under utilised location". Opportunity is not the same as justification. The purpose for which the AA is seeking to acquire the land is set out in paragraph 1.4 of the Statement of Case (Document CD4 - D3). Notwithstanding several misleading suggestions to the contrary, it was not until the start of the Inquiry that the AA confirmed that Phases 1-3 are independently viable. The AA stated

that "it is no part of its case that Phase 4 is necessary to make Phases 1-3 economically viable. The Council's case in relation to the Arvin land is not predicated on an ability to carry out Phase 1 to 3; it is based on what would be lost if Phase 4 is omitted". (Document CD6 - F2) This was restated by witnesses for the AA.

93. The AA's case is that the acquisition of land within the CPO will facilitate comprehensive redevelopment. The AA's preference for a blank canvas with which to work has led to the interests of Arvin, and their potentially significant contribution to the scheme in terms of employment, being ignored.
94. The CPO is not tied to the terms of the outline planning permission. The objectives of the CPO, and notwithstanding the clear focus on housing, are not tied to the delivery of a certain quantum of housing to meet an identified need. A reduction in unit numbers, therefore, cannot be used as a reason to include the Arvin land within the Scheme. That leaves a justification based on the assertion that the Scheme will "significantly improve...the overall appearance of the area". (Document CD4 - D3 paragraph 6.21)
95. The CPO is intended to achieve four more specific regeneration outputs. These are the regeneration of the Robin Hood Gardens Estate; the development of new affordable and private housing to the north of Poplar High Street; a replacement for the Woolmore Street Primary School; and a residential-led regeneration of land to the south of Poplar High Street. The AA now appears to be placing greater emphasis on the perceived importance of the Arvin site in relation to place-making and townscape issues than previously when the emphasis was on boosting the scheme's housing delivery. At a CPO Inquiry, the Secretary of State is required to consider the acceptability of the scheme proposal in terms of its compliance with the planning framework, regardless of the planning permission.

The AA's flawed justification

96. Each remaining strand of the AA's alleged justification for the CPO is fundamentally flawed. Each flaw, in and of itself, should lead to the conclusion that the Order should not be confirmed. Cumulatively, the merits of Arvin's objection are overwhelming.

(i) Failure to appropriately consider and assess the issue of housing need

97. The AA's witnesses, in line with the Statement of Case and the Statement of Reasons, acknowledged that the primary objective of the scheme is the delivery of housing. This gives rise to two issues: i) whether there is a demonstrable need for the provision of more housing in LBTH which could justify a compelling case in the public interest for the acquisition of the Arvin land; and ii) whether the retention of Arvin would materially reduce the opportunity to provide up to 1,575 dwellings on the Order Lands.
98. Concerning the first issue, the AA's main witness who confirmed that if the full objectively assessed need exists (in accordance with para 47 of the Framework) then the need to provide more housing (beyond the objectively assessed need) cannot be said to exist. That witness conceded that he had made a number of incorrect assertions (Document DOC16 para 46). In fact, since the start of the LP, there has been an over-supply of 1,487 dwellings so instead of needing to catch up, LBTH had met and exceeded its targets (Document DOC16 para 49).

99. Indeed, in the last 4 years, during a serious economic crisis, the Council has exceeded the annual requirement by an average of 135 units per year. The Council agreed in cross examination that it has a five-year housing land supply (the actual figure is over 6 years). Even if the emerging *Further Alterations to the London Plan* (FALP) is given weight, there would still be a healthy surplus and for both the next two years the FALP requirement would be exceeded.
100. The need would be met even if the Arvin site were removed from the Order Lands. The AA now accepts that LBTH has met previous years' targets and has a five-year housing land supply of deliverable sites. Beyond 2017 little weight can be given to FALP due to it having only reached an early stage in the process. The figures in the Council's *Monitoring Report* (Document CD6 - F9) exclude non-conventional and windfall sites so the figures are incomplete. The data is sourced from the GLA London Development Database, which is incomplete.
101. Housing need is not the same as housing demand. The AA has misunderstood the extent of need as set out in the LP. Based upon *Hunston* (Document DOC21/22) housing need should be considered on the basis of what is in the development plan now. The figure of 2,885 represents the present objectively assessed need as it is in the CS and the LP and is retained in FALP up to 2015. Local planning authorities may set higher targets under the LP if they have evidence to suggest that the targets would not deliver sufficient housing to meet an identified need. The AA has not put forward any other figure to indicate any other objectively assessed need.
102. On the basis of the evidence to the Inquiry, the identified need for more housing in LBTH can be met without the inclusion of the Arvin site in the CPO. There is therefore no demonstrable need for more housing when judged against the Council's own objectively assessed needs.
103. Concerning the second issue, Arvin's evidence was that if the Arvin site was not included in the Order Lands, and disregarding the possibility of amending the layout, the total number of dwellings would be reduced by 287. However, it has become clear that this figure was an over-estimate. This figure was based upon the 2012 planning application, yet a greater number of units are being provided in earlier phases. The Council may seek to increase the overall number of units, as accepted by the AA. Mr Swift's evidence (Documents AGC3 & 4) is that it is likely that a greater number of units can be accommodated on the Order Lands.
104. If Arvin remained in situ it would still be possible to replace all the homes within the Robin Hood Gardens Estate and still increase the number of units by about 1,000. Mr Swift's evidence shows how more units could be accommodated so as to enable Arvin to be retained in its present form or reconfigured elsewhere within the Order Lands. In either case, the consented number of dwellings (1,575) can be accommodated and the housing targets met and exceeded.
105. If the Arvin site was excluded from the Order Lands, that need not prevent additional market and/ or affordable housing from coming forward. Gains could be made by adjusting tenure mix, revising the layout or by working with Arvin to bring forward a scheme that would accommodate Arvin within the development. The private sales are not aimed at LBTH residents. While there is no doubting the strength of interest from overseas investors, should this be at the expense of local jobs and an important local employer?

106. If Phase 4 is omitted, it could be looked at again by the parties. The Arvin site is not required until at least 2018 so there is a substantial amount of time that would allow this phase to be re-planned without any impact on the timing of the delivery of the scheme. If the Order is confirmed excluding the Arvin site, there is still likely to be a significant amount of residential development in respect of the balance of Phase 4. The Council's own witness acknowledged that, on the balance of probability, it is likely that 1,575 units could be achieved on the Order Lands while retaining Arvin in a comprehensive scheme of regeneration.

ii) Failure to meaningfully consult and engage with Arvin

107. The use of a CPO should be an absolute last resort after full consultation has taken place and following proper negotiation to purchase the interests of the party in control of the site. Neither has taken place. However, the AA appears to have attached importance to negotiating with, and satisfying, other parties. While the Statement of Case (Document CD4 -D3 page 41) says that the Council will demonstrate extensive consultation exercises and will continue to make efforts to acquire the land by agreement, this is demonstrably false.

108. There were three opportunities for consultation: when the planning framework for the area was being prepared; in relation to the planning application (before and after submission); and in anticipation of the making of the CPO. Despite this, the AA has repeatedly failed to engage with Arvin's desire to stay at Blackwall. The correspondence bundle reveals the true extent of the AA's failure to meaningfully engage. (Document Series E)

109. Concerning the planning framework, at the time Arvin was operating a viable business, supporting local jobs and contributing to the local economy. The consultation on the BRRF was on planning matters. The fact that Arvin made representations at this stage was no reason not to further consult fully on the CPO. Despite being recognised by the AA at the Inquiry as being an important local business, the planning application team did not directly approach Arvin.

110. It was made abundantly clear at the meeting on 12 July 2012 (Document Series E page 515) that the GLA and the AA would not consider the option of Arvin remaining on the site. Arvin was told at that meeting that the CPO would be served by the end of summer 2012. Arvin was told that they could not remain on the site as it was needed for housing. The letter from LBTH dated 23 October 2012 (Document Series E page 475) shows that Arvin's concerns were being treated with disdain. Those who attended the July 2012 meeting on behalf of the GLA/ AA have not given any evidence to the Inquiry; that includes the person in charge of the project which is said to be LBTH's flagship regeneration project.

111. Paragraph 24 of the Circular expects that an AA will make real efforts to acquire the interests of affected parties by agreement in advance of the CPO process. The AA has not made a single financial offer to Arvin. The CPO proceedings were not entered into as a contingency; they were not a last resort – they were a first resort. The decision to acquire the Arvin site appears to have been made by resolution in 2011, well before any invitation to discuss either Arvin staying on its site or of a reconfiguration to permit retention in the Order Lands. This is contrary to advice in paragraph 25 of the Circular.

112. Arvin has always been supportive of the regeneration of the area (Document Series E pages 611-615). It has invited discussions. Arvin's directors have been

here every day of this inquiry; there have been no offers of talks. The focus has been on consultation with the residents. The AA has accommodated the needs of the Mosque and, during the Inquiry, the needs of an objector, Mr Mohammed Aziz. There has been no similar exercise with Arvin.

iii) Failure to consider, assess and test alternatives

113. Genuine alternative options, including the retention of Arvin on its present site, have never been properly considered by the AA. Paragraph 16 (iv) of Appendix A of the Circular emphasises the importance of alternative options. Arvin's objective has been to seek a solution whereby the objectives of both parties could be met; this has not been disputed by the AA.
114. Every one of the AA's witnesses who was asked the question concurred that in principle it would be possible for Arvin to stay on the Order Lands in some way, shape or form. While a comprehensive approach was considered preferable, the land could be re-planned without the Arvin site. It is common ground, therefore, that there are ways in which Arvin could be accommodated in the Order Lands. Mr Drabble even accepted that, on the balance of probabilities, it is possible to come forward with a comprehensive regeneration scheme that will deliver 1,575 units and retain Arvin in some way, shape or form. There is no evidence to suggest that the AA even explored this option prior to the Inquiry. It is capable of delivery without recourse to a CPO.
115. Two of the AA's witnesses accepted that if it could be demonstrated that the nature of Arvin's activities are compatible with a residential environment, there is no reason to consider that planning permission could not be obtained that would permit Arvin to remain on the Order Lands. Although the full PDA has not been released by the AA, it was acknowledged by an AA witness that the provisions enable a re-planning of the area in the right circumstances. There is no reason to believe that it could not (absent an unredacted document).
116. Arvin has now stated that, in principle and subject to compensation, it is prepared to move its tile manufacturing machinery to its Glasgow factory should that be necessary (Document DOC16). In any case the predominant use is B1 which by definition is acceptable in a residential area. There is some manufacturing, as well as deliveries, but these are generally in normal office hours. The AA had no evidence as to any incompatibility with residential amenity although it has never observed, monitored, assessed or even visited the site in respect of such considerations. There is no evidence to suggest that Arvin is a "bad neighbour".
117. Witnesses for the AA acknowledged that there are many examples of industrial and residential uses happily coexisting in the immediate area. The proximity of the DLR to proposed housing was described by the AA as not being an insurmountable obstacle. There are measures that can be used to mitigate any potential amenity issues. In any case, it is an issue that goes to the value of any units, not the actual provision of dwellings. The residential use here at the lower levels is already compromised by the visual presence and noise from the DLR station and high level track and by road noise from Aspen Way.
118. Providing the objectives of both parties can be met, there is no reason to suppose that satisfactory terms could not be agreed. This would obviate the need for compulsory purchase. There is sufficient time for this part of the

scheme to be re-worked. There are several reasons as to why it should be re-worked including: Arvin is a long established important local employer; no scheme options for retaining Arvin have ever been tested; the permission is for up to 1,575 units, the actual development may be less; the s106 agreement is capable of re-negotiation; it is likely that the scheme will change over time due to changes in the commercial world context; there could be a re-appraisal of the viability of the original, larger, scheme for Blackwall Reach in the light of changed market conditions; the site has a poor environment for residential development, it is better suited for employment use; there may be heritage implications for some of the proposals for Naval Row; servicing The Steamship PH has not been considered yet; and the AA has never considered Arvin to be an opportunity.

119. It has never been considered by the AA whether there are "any other means" by which the purpose of acquiring the land could be achieved. It is accepted that Phase 4 could be re-planned. The four alternative proposals put forward by Arvin (Document AGC4 pages 16-25) are adequate to demonstrate that the CPO is not a measure of last resort. However, they are not necessary for Arvin's objection to succeed. Even without these alternatives, the AA would still have needed to satisfy the "last resort" requirement. The illustrative alternatives are just that; a preliminary illustration of possible ways in which Arvin could be accommodated.
120. Arvin has thus complied with the spirit and the letter of paragraph 16(iv) of the Circular. The alternative suggestions form a legitimate starting point for future negotiations. They are not an exhaustive list of possibilities; there would need to be more engagement with the AA to come up with the most appropriate alternative. There is no reason to suggest that Criterion Capital, a land owner who has not objected to the CPO, would not co-operate. Whether or not a scheme involving the retention of Arvin is "better" in planning terms is irrelevant. The appropriate balancing act is that in *Prest* (Document DOC17) "If there is any doubt in the matter, the balance must be resolved in favour of the citizen".

iv) Failure to provide for adequate employment floorspace as part of an alleged "comprehensive" regeneration scheme

121. Arvin is a family business and a major employer in the area. It was relocated to LBTH in 1971. The lease provides for a peppercorn rent and required Arvin to develop its own buildings. The *National Planning Policy Framework* (the Framework) is clear that development is not sustainable if it does not take account of economic as well as social and environmental considerations. The AA once saw the benefits of promoting a truly mixed use development here with 10,000 to 15,000 sq m of commercial floorspace. The BRRF (Document CD2 - B16) envisaged new homes as part of a mixed use development. The BRRF acknowledges that the site provides an opportunity for much needed homes and jobs (para 1.3.8). At section 2.4.4 it says that the regeneration proposals should provide, amongst other things, purpose built business floorspace to accommodate a range of unit types and sizes.
122. In the CS the vision for Blackwall is also for a mixed use area (Document CD2 (B14, p 121 LAAP 7 & 8)). The MDD DPD seeks a strategic housing development as part of a comprehensive mixed use development. The framework for the regeneration of Blackwall Reach has envisaged industrial jobs. The approved scheme, however, does not include any industrial floorspace and the employment floorspace is "token" when compared to the commercial floorspace envisaged by

the BRRF. At the time the outline planning permission, draft Policy DM15 of the MDD DPD required sites to be marketed and that displaced existing businesses must be relocated within the Borough. This policy was subsequently amended but the supporting text (para 15.1) still supported existing businesses.

123. The context of the Blackwall Reach regeneration is clearly one in which a mixed use development was sought. At the time when planning permission was sought Arvin was protected by development control policies. There is no evidence to suggest that the policies were followed; there was no marketing exercise and no replacement accommodation was found.
124. The only B-Class use is an office for Swan Housing, a development partner of the AA. There is no other space providing starter units, despite this being part of the AA's Statement of Reasons (Document GD9 para 9.5) for compulsorily acquiring the land. Some of the Swan jobs will be relocated from nearby Chrisp Street. The AA has not challenged various points raised by Mr Nicol including that the retail jobs would be low paid and considerably lower paid than the Arvin jobs; the Environmental Statement (ES) does not take account of the quality of employment. The comparison is between jobs definitely leaving the site (Arvin) compared to new jobs. The ES estimates seem to assume 100% occupancy of all the commercial elements in the scheme. The ES exaggerated employment densities; construction jobs are temporary.
125. The imminent Town Hall relocation and likely change of use of offices to housing will result in the loss of jobs at East India Dock. The loss of these jobs makes the retention of the Arvin jobs more important and carries significant weight. The AA failed to consider the possibility of Arvin staying within the Order Lands; there is no proper with-Arvin/ without-Arvin comparison despite the Framework clearly making economic considerations a component of sustainable development. It is therefore not possible to say that the development of the Arvin site is compliant with the planning policy against which the development was assessed; the purpose of acquiring the land fits with the adopted framework; the development would be sustainable (in the Framework terms); compulsory acquisition is the only way to achieve viable regeneration of the area; and that compulsory acquisition is a last resort.

v) Planning (paraphrased as "this is a CPO Inquiry, not a Planning Inquiry")

126. The AA states that the inclusion of the Arvin site is required to "create a seamless urban grain...and deliver a significant number of new homes". Taking account of the Statements of Reasons (Document GD9 para 9.3) and of Case (Document GD8 p 40) the AA now seems to be placing more emphasis on place-making and townscape than previously (Document CD6 F2 para 17.6). There is no policy need to include the Arvin site to facilitate linkages or address the dominating effect of nearby infrastructure. Arvin has demonstrated a willingness to make aesthetic improvements to its site if required, and, at the Inquiry, to move its tile manufacturing equipment to Glasgow (Document DOC16).
127. There is no evidence to suggest that Arvin would be a bad neighbour if retained in the scheme. An assessment of what is in the public interest does not start and finish with the scheme's compliance with a housing site allocation. The AA's positions that the BRRF contains "aspirations" and a "vision" for employment floorspace are at odds with the assertion that the BRRF's provisions about height, density and massing being "rules".

vi) Failure to make appropriate provision for funding

128. There are a number of competing interests that are required to be balanced and addressed in order that the objectives of the CPO are delivered through the planning permission. These include the duty of LBTH and the GLA to secure the best consideration on the sale of their property assets; the State Aid Regulations which underline the first consideration; the cost of acquiring land pursuant to a CPO, including properly claimable disturbance costs; the obligations set out in the planning permission and s106 Agreement; and the commercial requirement of Swan and Countryside to secure an appropriate level of development profit. These add to the costs of the development as a whole. Their impact upon financial viability will be regulated through the terms of the PDA.
129. The financial tests in a case like this relate to a direct financial test in respect of the re-provision of the Robin Hood Gardens dwellings and the more subjective assessment of whether the remaining objectives of the CPO are capable of being delivered. In this context, the subjective test is whether the regeneration of the land to the north and south of Poplar High Street will not take place if Arvin remains in situ. If on balance it is likely then the compulsory acquisition of the Arvin site cannot be justified.
130. The AA is providing a scheme that "over-provides" in terms of affordable housing; certainly that is the case in terms of minimum numbers relative the 252 that are required to re-provide the housing at Robin Hood Gardens. It would be inappropriate for the AA to acquire land compulsorily purely to balance the financial economics of their ambition to provide as much affordable housing as possible. The AA has not attempted to update the relevant appraisals in the light of the significant improvement in housing values in the area.
131. The Inquiry heard that the inclusion of all the Phase 4 land in the CPO merely serves to increase the number of units. The real reason for the inclusion of Phase 4 may well be to increase profit for the Development Partners to be apportioned between them in accordance with the terms of the PDA. If the number of units was reduced, the scheme would still be viable, albeit less profitable. The inclusion of Phase 4 (and Arvin) does not deliver anything that is not delivered by other phases.

The PDA

132. Arvin does not resile from the terms of the s250 LGA 1972 application. The AA is bound to accept that the PDA sets out the arrangements by which the land is to be acquired and developed. Arvin has continually been denied sight of the original PDA; this obstructive behaviour is typical of the AA's approach. The disclosed PDA is redacted to the point where it is not possible to fully understand how it will operate. The AA has acknowledged on day 1 that to the extent that any part of its case relies upon a non-disclosed section of the PDA, it must necessarily fail.
133. The AA is under a duty to demonstrate that the requirements of the Circular have been met. Financial viability is addressed in sub-paragraph 16(iii) of Appendix A. The heavy redaction of the PDA means that the basis of the financial test is not known. It is not clear what happens if the CPO is not confirmed in full or if the decision to confirm the CPO (in part) is postponed. The Funding Condition is also redacted. Arvin had its consultants consider whether

the Order Scheme could be achieved by other means, without the need to acquire the Arvin site. The AA should have carried out this exercise.

134. Phases 1-3 will proceed in any event. Phase 4 may need to be re-planned. The Secretary of State has to rely on the vague assertions of witnesses. The AA should have provided sufficient detailed information to allow the assertions in the Statement of Reasons to be properly tested. In the absence of details as to how the PDA will operate, the Secretary of State cannot be satisfied as to the weight that can be given to the Statement of Case and cannot be certain that the scheme is viable, fundable and deliverable. The Inquiry cannot form any view as to whether the funding and viability conditions in the PDA will be met. This fundamentally undermines the AA's case.

Land acquisition costs

135. The Secretary of State must be satisfied that there is a reasonable prospect that the acquisition will proceed if the CPO is confirmed. There is no reasonable prospect here as the AA's budget appears to drastically undervalue the Arvin site. The GVA appraisals assume a total cost for assembling the land required to be £23.60m. By deducting what has been spent, it appears that £1.75m was allowed by GVA to acquire the two outstanding interests, one of which must be the Arvin site. This is woefully inadequate. An offer for the land (not the same as a proper valuation) in 2007 on behalf of the Milton Group, was for £4.5m. This shows that the AA has seriously failed to account for an adequate compensation package.

vii) Lack of suitable relocation proposals

136. It was not until July 2013, over 4 months after the CPO, that the AA presented Arvin with a list of potential relocation sites. The decision by the Secretary of State to refuse a CPO sought by LTGDC for a scheme in Bromley-by-Bow is relevant. The slowness of LTGDC in addressing the issue of relocation had not been consistent with the Circular guidance. It was suggested that discussions should have begun around the time the CPO was made. There is no urgency here; relocation should be secured before a CPO is confirmed.
137. It was not until September 2013 that the principle of a relocation agreement was even mentioned by the AA. This was, in reality, an exercise in window dressing. The Objector has set out the difficulties in relocating this business. Its key features are its proximity to the strategic road network; car parking; proximity to high quality public transport; and proximity to its market, especially in Central London and the City. (Document AGC10 paras 4.7 & 7.2)
138. A highly experienced local agent was unable to identify a site currently available that would meet Arvin's needs, although as Arvin's site is not required for 6 years it could not be expected to seek to acquire such a site if it was available. The AA had suggested a number of sites, although in evidence it relied upon just two. Neither would be suitable. The AA now suggests that they were a starting point rather than sites that were suitable, appropriate and available.
139. There is no evidence that a longer lead-in period increases the prospects of a successful relocation. The evidence concerning increasing pressure on development land indicates that the reverse is more likely to be the case. The AA had sufficient information about Arvin's requirements. In any case the AA

could have asked questions earlier than just before the Inquiry opened. No financial offer has been made to Arvin. There is not even any indication of the financial package that would be available to enable relocation.

140. It was accepted in cross examination that the AA had considered relocation to the limited extent that the sites were examples of what might be available if the Order is confirmed in its present form. The only evidence to the Inquiry by a commercial agent suggests that relocation will be extremely difficult as: the revived housing market is putting more pressure on industrial land; significant increases in industrial rents and sale prices due to increased demand and reduced supply; competition for industrial land from private sector and social housing reducing supply; and demand for land for housing in this area will make the proximate relocation of Arvin very expensive.

141. While planning permission has been granted, there is still a need to consider the terms of Policy DM15 in respect of the CPO; it would limit the relocation of Arvin to a site within LBTH. The AA's stance is that any relocation would have to be outside the Order Lands. All correspondence concerning relocation must be seen in the context that the AA was only considering off-site relocation. The letter of 20 May 2014 (Document DOC16), following the AA's concessions of accepting the principle of the retention of Arvin within the Order Lands, addresses a different world. It accepts the possibility of moving machinery to Glasgow and is in keeping with Arvin's pragmatic approach.

viii) Confirmation of the Order not justified due to its timing

142. The proposed programme of development and phasing is also relevant for the purposes of the timing of the Order. The table at paragraph 3.8 of the Statement of Reasons (Document GD9) sets out the proposed phasing. Paragraph 6.9 says that the construction programme assumes that development of Phase 4 will commence in 2018/2022. The AA accepted that it is possible that the Arvin site will not be required for 10 years given that the latest start date for this phase is 2024. Even if it took only 2 years to build, completion may not be until 2026. If the CPO had been made under s17 of the Housing Act then guidance in Appendix E of the Circular would preclude confirmation of the Order as the Secretary of State cannot be satisfied that the land would be required within 10 years.

143. However, the reference to Appendix E in footnote 3 of Appendix A provides that the guidance in Appendix E is of continued relevance and is just as applicable to compulsory purchase under s226 of the Act as it is to powers exercised under s17 of the Housing Act. The advice in paragraph 7 of Appendix E is therefore relevant. The AA has failed to justify that the evidence of a construction period of 4.5 years is unreasonable, as suggested by Mr Pavlou (Document LBTH12 App 8). The question should be whether there is evidence that an exception is necessary in this case; the answer is clearly none and the AA has brought the CPO prematurely. It would be logical, on the evidence put forward, to remove the Arvin land from the Order.

Conclusions – i) General

144. Has the AA demonstrated a "compelling case in the public interest" that the Arvin site be acquired compulsorily? Given that the AA now accepts that it is probable that a comprehensive regeneration scheme that will deliver 1,575 dwellings and retain Arvin in some way, shape or form, the answer is a

resounding “no”. The inclusion of Arvin within the Order Lands and the failure to consider alternatives has resulted in an ill-considered and misconceived CPO.

145. The case for compulsory acquisition of the Arvin site is not compelling but hopeless. There is no public interest in needlessly jeopardising a long established and successful business group. The Secretary of State will be especially concerned about the timing of acquisition; the Circular advice is especially pertinent and engaged. The scheme’s viability would not be compromised by the exclusion of the Arvin site and the regeneration scheme can be achieved without it. Given the economic value of the Arvin businesses, and the large number of people they employ directly and indirectly, the design objectives cannot be found to better serve the public interest than safeguarding the future of the Arvin businesses by excluding the Arvin site from the CPO or working with Arvin to accommodate them within the scheme.
146. The Arvin site is not needed to meet housing targets; there is a healthy 5-year supply based upon the AA’s own assessments. The scheme would deliver more than twice the amount of affordable housing that is presently provided in the area. The exclusion of the Arvin site need not prevent additional market or affordable housing from being brought forward. Adjusting the tenure mix; revising the layout; or working with Arvin to bring forward a scheme that could accommodate Arvin in addition to additional housing. Arvin therefore invites the Secretary of State not to confirm the CPO with respect to the Arvin land.

ii) Why the Order should not be confirmed in full on a “precautionary” basis

147. Paragraph 19 of the Circular suggests that the AA needs a “clear view” as to how it will use the land in the CPO. There is planning permission, PDA and Development Partners. The AA acknowledged that CPO is an act of “last resort” but it is now common ground that there are ways in which Arvin could be reconfigured to be kept on the Order Lands or in situ. It is not appropriate for an Order to be confirmed merely as a precautionary measure; until alternatives have been tested an Order in relation to Arvin should not be confirmed.
148. It has been established that there was no negotiation and consultation with Arvin before the Order was made, as required by paragraph 24 of the Circular. The Secretary of State has to take a balanced view between the AA and affected parties. Arvin submits that: there is no reference in the Statements of Reasons or Case to land being included in the Order to facilitate the relocation of affected parties; the history points to the AA setting its face against Arvin staying in Blackwall Reach; if the Order is confirmed can the Secretary of State be satisfied that the AA will undertake negotiations with Arvin in good faith and on a fair and reasonable basis, or even at all; and there is no urgent need to acquire the Arvin site as even on the AA’s own case there are more than 4 years before it will be developed.

iii) Why the Order should not be confirmed in stages

149. The AA considers that the Secretary of State’s powers under s13C of the Acquisition of Land Act 1981 should be a fall back. Arvin does not consider that such power arises in this case as it would only be appropriate where the Order was in all respects fully justified; that the relocation of Arvin was proportionate, necessary and in the public interest; and that the reason that power was being exercised was because there was an impediment to the making of the Order.

150. In terms of the purpose of the Order, evidence indicates that the main purpose for the compulsory purchase of the Phase 4 land is for unit numbers and place-making. However, it is accepted that each phase is independently financially viable; there has been no exploration of the paragraph 16(iv) of the Circular propositions; there has been no exploration of how Arvin could be accommodated; the redevelopment of the Arvin site only requires the agreement of the GLA and Arvin; no negotiations have taken place to acquire the Arvin site on terms that would meet its objection; and the regeneration of Robin Hood Gardens Estate could come forward without the Arvin land.
151. The s13C issue was not raised by a single witness for the AA; there has been no invitation from any of its witnesses for the deferral of confirmation under such powers. It carries limited weight as it is not supported by any of the AA's professional witnesses. It would be intrinsically unfair as it was not possible to challenge any evidence concerning the use of s13C powers.
152. Arvin's witness stated that he did not consider the current position to be an impediment of the sort envisaged by paragraph 53 of the Circular. That statement was not challenged. The evidence was correct. This is most clearly demonstrated by the example provided as to the type of impediment envisaged by the Circular, as set out in footnote 19 to paragraph 53. In this case the only possible impediment is the need for discussions between Arvin and the AA/ GLA as to any possibility of retention within the Order Lands. These are not the sort of impediment identified in the Circular. Such discussions should have happened years ago; all parties should start such discussions in the same position.
153. The AA has not identified that the current position is an impediment. Substantial weight should be given to the fact that Arvin's evidence on this was not challenged.
154. There is also significant uncertainty concerning the content of the PDA and the influence of Swan in any subsequent negotiation process. There could be a clear conflict of interest, unfair to Arvin. To ask parties to negotiate in the shadow of a part-confirmed Order would be manifestly inappropriate and unfair. The Circular envisages such discussions before the CPO is made. Arvin repeats its request for a period of genuine dialogue (Document Series E p 453).
155. The AA is now asking for confirmation in stages as it has not made out a compelling case in full. The point of last resort has not been reached as there are alternative proposals that could, should and ought to have been considered. If a compelling case has not been made out then the Order should be modified to exclude Arvin. Any further delay would prejudice Arvin as a business; it has already faced a long period of stress and uncertainty and it may be years before a reconfigured development comes forward.
156. The "normal" course of events if the Secretary of State refuses to confirm the Order in full would be a negotiation between the parties acting reasonably and in good faith. None of the identified hurdles are insurmountable and there is a period of time before the Phase 4 land is needed. Successful negotiation could bring forward development earlier than now proposed. The AA has no track record of behaving fairly towards Arvin.
157. The *Neptune Wharf* case (Document DOC19), and other Olympic CPO cases that discuss s13C, are clearly distinguishable from the current CPO as the

Olympic CPO related to a unique proposal with substantial public benefit; there was an overwhelming need for the specific sites; there was a clear and objective need for the Olympic site to be brought forward in a comprehensive manner; the Olympic CPO was very time-sensitive, described by the Secretary of State as having a "critical timetable"; and in the *Neptune Wharf* case the Secretary of State exercised s13C powers of his own accord so no party had the advantage, in evidential terms, over the other.

158. The right approach is for Arvin to be excluded from the CPO and for the opportunities for Arvin to remain on the land to be properly explored. This would give the AA time to come forward with a development that provides a proper balance between the provision of housing and the retention of jobs on the Order Lands. Insofar as the Arvin objection succeeds, there may be a knock-on effect on the SUO that concerns the access to Arvin's premises. It would be perverse to confirm a SUO with Arvin left isolated.
159. Arvin requests the Secretary of State to not confirm the CPO with respect to Plots 113, 114, 115 and 116.

Response by the Council

THE CPO

160. The AA has sought to acquire all the land required to deliver the Order Scheme by agreement; it has been largely successful. The only outstanding objection, other than those by two statutory undertakers, is by Arvin. Arvin complain that they have not been properly consulted and that had consultation taken place it would have been possible to produce a scheme that enabled them to remain on their existing land or provided alternative accommodation within Phase 4.

Consultation

161. Arvin complain that LBTH failed to consult them as to the possibility of retaining Arvin within Phase 4; with a view to acquiring the site by negotiation; and in connection with any possible relocation to a suitable alternative site. Arvin contends that such consultation as did take place did not occur when LBTH's proposals were at a formative stage.
162. It is important to consider how consultation fits into the CPO process. While consultation involves listening to consultees with an open mind, it does not necessarily mean agreeing with everything that they say. Consultation is a two-way street; it is open to consultees to identify a missing option or issue to be addressed if they consider the options are too limited. A consultee cannot complain if the AA does not address an issue it was never asked to consider.
163. No AA would begin to contemplate the acquisition of land by compulsory purchase without a clear idea as to how it intends to use the land. The Circular refers to a clear strategic framework and whether a scheme fits the adopted planning framework. It is normal for an AA to obtain planning permission in advance of seeking compulsory purchase powers and it is likely that any application will have been formulated having regard to the development plan. By the time it makes a CPO, the AA should have a policy framework and, often, a planning permission in place.

164. Having got to this point, the AA will not start again when it makes the CPO; it will begin from the point that it intends to use the land for the identified purposes based upon the planning framework and for which it has planning permission. Paragraph 24 of the Circular has to be read in the light of these considerations. It makes reference to an AA seeking to acquire the land by negotiation wherever practicable. There is nothing in this paragraph that expects the AA to redesign the purposes for which it seeks to acquire the land.
165. This does not rule out alternative suggestions after the grant of planning permission. However, while a new point might reasonably be considered, an objector who raises a point that has already been considered and rejected might expect to receive shorter shrift. The paragraph 24 requirement is not absolute; it says "wherever practicable". This depends to some extent on whether landowners are prepared to come to the table and talk and the timescales within which they are able to do this. It also depends upon the extent of the modification sought. Paragraph 24 supports the pursuit of compulsory purchase in parallel with negotiations. In this context, formative stages must include the formation and development of the planning framework so an objector must be prepared to engage in consultations on the development plan.
166. Arvin's argument that consultation on compulsory purchase is divorced from the process of consultation on the planning policy is not right. The Circular envisages the CPO being drawn up in the context of the planning framework. Development plans are adopted in order to further the public interest and the adoption process involves a balancing of interests.
167. Arvin accepts that if the extent to which the Order Scheme is consistent with the planning framework is a relevant consideration, it is also relevant for the Secretary of State to consider whether alternative proposals are consistent. If the Secretary of State is minded to uphold the Order over the remainder of Phase 4 but to exclude the Arvin site, he would need to consider the extent to which the acquisition of the remainder of Phase 4 lands would satisfy the Circular guidance.
168. Applying the above considerations to this case, Arvin was consulted on the development of the planning framework for the area. When the BRRF was being developed, Arvin engaged in the process and instructed GL Hearn to make representations (Document Series E p 627). While Arvin has subsequently said that these representations did not properly represent its position, some points are worth consideration. In 2008 Arvin objected to the BRRF in terms which clearly recognised that the retention of Arvin would be inconsistent with the BRRF. The BRRF proposals for comprehensive redevelopment are clearly inconsistent with allowing Arvin to remain in situ.
169. The consultants acknowledged that the Arvin site had development potential and value and that the whole area required fresh thinking and new investment. It was a significant development opportunity that should not be missed. The letter made it clear that the Arvin site could and should be developed, the difference being that Arvin considers that it could redevelop the site itself. That stance implied the relocation of the Arvin businesses.
170. The contention that Arvin could "go it alone" was considered and rejected by LBTH. However, it is necessary to consider whether Arvin could actually do that given the nature of their interest in the land; whether it would make good

planning sense for them to do so; and whether there is any evidence that Arvin are likely to do so.

171. On the first point, Arvin does not own the site and the lease has only 37 years left to run. Without the freehold it is highly unlikely they could attract the funding for high density residential redevelopment. In any case, the lease requires the landlord's consent. On the second point, the site is over the southbound bore of the Blackwall Tunnel which would materially increase development costs or prevent development. It is a significant constraint and is the sort of issue that demands a comprehensive approach. The Phase 4 development will need infrastructure and the replacement of the bus loop. Arvin's claims concerning the redevelopment of the site as a freestanding contribution towards the regeneration of the area remain highly unrealistic.
172. On the third point, in the 6½ years since GL Hearn argued that Arvin could redevelop the site themselves, they have taken no steps to do so. Although Arvin's letter of objection to the CPO asserts that Arvin could develop the site themselves, the company has made it clear throughout that it simply wants to be left alone to carry on their businesses on the existing site. If the Secretary of State omits the site, Arvin will have achieved that. If the site is excluded, there would be no mechanism for the delivery of housing on the land. Given the 6½ years of inaction the Secretary of State is advised to approach any assurance concerning Arvin redeveloping the site themselves with considerable caution.
173. The GL Hearn letter was followed by Bevan Britten's letter of 28 February 2008 (Document Series E p 611) in which Arvin made it clear that what they actually wanted was to be allowed to remain on their site. The letter was circulated to Cabinet Members who rejected the suggestion that Arvin could simply be left in situ. This was clearly right as it would run counter to what the BRRF was seeking to achieve.
174. Policy continued to evolve beyond the BRRF and there were at least five points between July 2008 and January 2012 at which Arvin could have engaged in the process. These were the CS, *Options and Alternatives* (July 2008); CS, *Options and Alternatives for Places* (February 2009); CS, *Proposed Submission* (September 2009); the *Sites and Placemaking Document*, later merged into the MDD DPD – the draft included the proposed allocation of Blackwall Reach for large scale housing with no mention of retaining existing businesses; and MDD DPD Submission stage (January 2012). Arvin did not engage in any stage.
175. The CS and MDD DPD both continued to promote the comprehensive regeneration of the Order Lands and Arvin recognised that remaining in situ was not consistent with the BRRF. The retention of existing businesses was not included in the CS or MDD DPD site allocation for Blackwall Reach. Their adoptions were key stages in the formation of policy for the area. Arvin must have known and understood the implications for their continued occupation.
176. Arvin complain that the use of CPO powers was authorised as long ago as January 2011, but by then the development plan framework was well advanced. The CPO power was not directed specifically at Arvin; it applied to the Order Lands and was an authority to make an Order in so far as it proved necessary.
177. There were more opportunities for engagement in the development and consultation of the planning application. Arvin wrote in March 2012 objecting to

the application on grounds relating to employment in the area; consultation; and as they intended to stay on their land it should not be included in the application given their contribution to the area in terms of local jobs and the local economy. (Document Series E p 537/8). The letter did not comment on the inconsistency between Arvin remaining in situ and the BRRF or CS aspirations for high density housing or on the placemaking aspirations of the planning framework.

178. Concerning the opportunity during the masterplanning process to include Arvin as part of the employment space, Arvin were not the only employer or landowner within the Order Lands. The fact that they are now the only objector could not have been apparent at the time; any consideration given to Arvin at the time would also have had to be given to other employers. LBTH could not have provided alternative layouts along the lines of Mr Swift (Document AGC 4) for every landowner. LBTH took the development plan policies as its starting point.
179. The AA, with the GLA, tried to engage with Arvin in March and July 2012. These meetings took place in the context of guidance in paragraph 24 of the Circular. At the time the planning framework was largely in place and the planning application well advanced. Arvin's point was the same as that raised in objection to the BRRF in that Arvin wanted to have their site excluded from the Order Scheme. (Notes of meeting: Document Series E pp 515-521)
180. Although the AA's response to this has been described as "pulling the shutters down", this has to be seen in the light of the fact that this was not a new point; the rejection was clearly reasoned as set out in the notes of the meeting; and Arvin were given the opportunity to explain why it was important for them to remain on the site. Arvin's response was that there was a "plethora of reasons" but these could not be divulged until there was a confidentiality agreement in place. This last point is important as, but for Arvin's insistence on confidentiality, a conversation of the sort now sought by Arvin could have taken place.
181. There was a misunderstanding between Arvin and LBTH concerning the confidentiality agreement and whether Arvin would provide any information to LBTH. The Council asked Arvin for a meeting and chased a response. Arvin were explicitly stating that the only meeting they were prepared to attend was one in which they set the agenda and were not prepared to discuss anything else.
182. A list of questions was sent to Arvin (Document Series E pp 443/444) but no response has ever been received. The Order Scheme was much larger than just Arvin and the AA progressed plans for making the CPO and in March 2013 a copy of the AA's Statement of Reasons was sent to Arvin. During this time the AA had never had access to the Arvin site. This created difficulties, for example the claim that the uses included a B2 use, incompatible with residential use, changed into a claim that it was a B1 use. Similarly, the tile making facility which was described by Arvin as being necessary on the site, could suddenly be moved to Glasgow (Document DOC 16). The AA is not surprised about this latter point which followed the site visit in which the B2 use on the site was, in the AA's opinion, demonstrated. The AA had said that Arvin could not be accommodated in a high density residential scheme; the AA was proved right.
183. The AA, in identifying search criteria for a new site for Arvin, had not had access to the site until after the exchange of proofs for this Inquiry. Even then the visit was not on a normal working day and no photographs or measurements could be taken. Any valuation would have had to be caveated accordingly.

184. Nowhere in the correspondence is there any reference to Arvin stating that they wished to stay on the site in some reconfigured form. This was first raised in a proof of evidence to the Inquiry and even then with no supporting details as to how it could be done. It was only when the unheralded arrival of Mr Swift's evidence that the AA was given any indication as to how it could be done.
185. Arvin say that no-one from the AA has crossed the room to speak to them. However, every time the AA tried to open that door it was accused of trying to improve its case at the Inquiry. Mr Passey made it clear in cross-examination that the appropriate time to commence such discussion was the day the Secretary of State refused to confirm the CPO in respect of Arvin's land. Almost everything that the AA knows about the detailed nature of Arvin's businesses has come through evidence to the Inquiry rather than in response to requests. If Arvin choose to speak to the Secretary of State rather than the AA that is a matter for them, but they should not then accuse the AA of failing to consult.

Alternative options

186. The Secretary of State should note the lateness at which the alternatives were introduced, especially in the context of Arvin's contention that the CPO should only be a last resort. Mr Swift put forward four options which show the retention of Arvin within the Order Lands. All options lead to a loss of housing; the options are all predicated on recovering this loss elsewhere within the scheme.
187. In its objections Arvin has said it could not be certain how many units would be constructed in Phase 4. Detailed reserved matters have yet to be put forward, but it is clear that it is not completely up in the air as Arvin's witness considered that 287 units are proposed in buildings on or substantially overlapping the Arvin site. The actual number may slightly differ, but not by much. There would also be other knock-on effects on Phase 4. The bus loop and bus stands need to be provided and if not on the Arvin site then elsewhere within the Order Lands. More dwellings would be likely to be lost.
188. Mr Swift suggested that the lost units could be reclaimed. These include building out to the full extent of the parameters; by extrapolating from earlier phases that an increase in numbers could be achieved within the building volumes in the masterplan; and reducing unit sizes.

Maximising within the parameters

189. Mr Swift assumes that if his options were adopted, the remainder of Phase 4 would be built out in accordance with the planning permission. However, the options are all likely to impact on other proposed buildings in that Phase. In any case it cannot be said for certain that the development could be carried out in that way. The planning permission includes conditions requiring additional impact assessments to be carried out at reserved matters stage. It cannot be assumed that all parameters can simply be maximised; this part of Mr Swift's calculations must be treated with a degree of caution.

Unit creep

190. The reserved matters for Phases 1a and 1b have been able to accommodate more units than originally proposed within the illustrative masterplan. Mr Swift has then applied this uplift across the whole scheme. However, he was unaware of the parameter reductions for the subsequent phases that were put in place

through the planning determination and embedded in the planning permission. Seven of the blocks lost 1-3 storeys each. The AA's evidence, based upon preliminary work for later phases, shows a capacity for about 4% more units in Phase 2 but no capacity within Phase 3. This reverses Mr Swift's assumptions about where additional units may be found, although the numbers are similar.

Unit size

191. Most of Mr Swift's additional units come from changing the underlying assumptions about unit size. He suggested that 2-bed units could be 61 sq m instead of 70 sq m and that 3-bed units could be 74 sq m rather than 106 sq m. He argues that the resultant units would still meet the minimum London *Housing Design Guide* standards. This approach is misplaced. He failed to recognise that the 2-bed units he is proposing are 3 person units whereas the Order Scheme involves, for the most part, the 2-bed units being designed for 4 persons. (i.e. 2 double bedrooms rather than one double/ one single). In respect of both the affordable housing and the buy to let dwellings this had been done to maximise occupancy levels.
192. For the 3-bed units, Mr Swift has proposed 4 person units instead of 5 or 6 person units. LBTH prefers the larger units for the same reason that they advise housing associations to build the larger 2-bed units. While there is no formal policy in this regard, the Order Scheme has been designed to meet the needs of the Borough. As would be expected of a scheme submitted by LBTH and the GLA, the size strategy was worked up in close cooperation with the housing strategy team within LBTH. It is not appropriate to contend that more units could be achieved by making them smaller.
193. Mr Swift confirmed that the best masterplans are those built around constraints. Here there are two main constraints affecting the Arvin land and its immediate surroundings - the Blackwall Tunnel and the viaduct of the DLR. The Order Scheme places streets and public realm over the tunnel bores; the need to take this constraint into account is implicit in Mr Swift's options. The land under the DLR cannot be used for permanent structures or even the storage of heavy materials. The approved masterplan responds to this by using this land for bus stands, car parking, highways and landscaping. The masterplan works with the constraints to allow maximum use of adjacent land.
194. The options of Mr Swift squander the advantages of a holistic approach. In a place where the planning policy explicitly seeks to locate tall buildings, all his options make less efficient use of the land with low rise buildings, storage and car parking. None of these options is consistent with the BRRF. In addition, the retention or relocation of the industrial/ warehouse buildings would be in that part of the Order Lands where the Design Code for the scheme says that new development should be responsive to the Naval Row Conservation Area.
195. None of the options leave Arvin untouched as even Option 1 involves Arvin releasing some of its land. The Secretary of State is asked to note that none of the options provide support for Arvin's central objection - that they should be left alone. Options 2, 3 and 4 all involve Arvin surrendering its site and being relocated to other land in Phase 4 that is outside the control of the GLA, LBTH or Swan, and is subject to the CPO.

196. This demonstrates that Phase 4 requires a comprehensive approach to redevelopment with control and ownership of the land pooled to enable delivery and that there is a need for the Secretary of State to be satisfied that the retention of Arvin would be consistent with development plan policies for the area. While Criterion, owner of land to the east of the Arvin site, have not objected to the CPO, the AA has not yet been able to acquire this land by agreement.
197. While the planning framework supports B1 uses, it does not support B8 use of the land. The low rise buildings and open storage shown on the 4 options are all inconsistent with the proposals for taller buildings and higher density between Aspen Way and Naval Row. While there are examples of residential/ storage uses operating cheek by jowl, this is not the sort of environment that the development plan seeks to achieve here. If Criterion were to object to a future CPO, or complain that the purpose for which the Secretary of State had approved the CPO differed from the purpose for which it had been made, it would have a fair point.
198. The way that the options put forward by Mr Swift are presented to the Inquiry was ambiguous. On the one hand they are alternative proposals for the purposes of paragraph 16(iv) of the Circular; on the other hand they are not options put forward by Arvin. They were put forward with no discussion as to their acceptability by Arvin. Mr Passey said that they could be made satisfactory with a few tweaks but gave no indication as to what this might involve. The options, therefore, are Mr Swift's not Arvin's.
199. All the options fail at least one of the search criteria applied by Arvin when looking at alternative sites. The compatibility of Arvin's requirements with the DLR constraints remains untested. If there is flexibility, as implied by Mr Swift's options, this calls into question the search criteria. None of the options have been integrated into the remainder of Phase 4; the knock-on effects have not been considered.
200. Considering the individual options, Option 1 involves the loss of some of the existing site. As the remainder of the proposal involves leaving Arvin in situ, it is not clear what tweaks Mr Passey had in mind which did not involve reclaiming some of the surrendered land. This option has the greatest impact in terms of lost unit numbers and conflict with the design principles of the masterplan. Mr Swift agreed that it was the least successful in design terms. It would create self-evidently undesirable relationships between the proposed new tall residential buildings and the builder's yard. It has not been demonstrated whether the bus loop and bus stands could be retained. The new route, through the proposed piazza, would involve a considerable amount of traffic using that route, changing the character of the piazza. This change was not considered by Mr Swift.
201. Other impacts of Option 1 include the loss of east-west connectivity and permeability; Blocks O, P and Q would become relatively isolated; the intent to upgrade the outlook along Poplar High Street would be compromised; the impact on servicing has not been considered; there is a reduced quantum of public open space; the relationships between the retained Arvin buildings and Blocks M and J have not been considered; Block P would overlook the Arvin site so this part of the development would need to be reconfigured; and there is potential noise and vibration from Arvin's industrial equipment. These factors could affect unit

numbers. While Arvin suggested changes to their buildings, there is no commitment to deliver this. This option is unacceptable.

202. Options 2 and 3 are considered together as they are variations of the same idea. Both options require Arvin to surrender part of their site and would require the AA to acquire and provide Arvin with part of the land to the east, currently owned by Criterion. These options respect the intent to relocate Prestage Way and this is an improvement on Option 1.
203. There are, however, other factors which are not desirable including reduced east-west permeability; Blocks O and Q would be isolated; the visual termination of Poplar High Street would be a builder's warehouse and not a residential building; the eastern side of Prestage Way would not have an active frontage; reduced public open space; it is not clear whether there is space provided for the bus stands under the DLR; and there may be issues in Block O with its relationship with any B2 use at Arvin.
204. Option 4 would involve very extensive land exchange between Arvin and what is now Criterion land. It is unclear whether there is sufficient storage space for Arvin given that the DLR is unhappy with heavy materials being stored under the viaduct. A different bus loop would be necessary and it is not clear whether alternative bus stands would be acceptable to TfL. It would isolate the play space at the eastern end of the scheme to the extent that it may not be possible to use this land in that way. There would be a significant loss of amenity space.
205. Overall, the options illustrate the constraints and challenges associated with trying to keep Arvin on the site. All require significant compromise to the fundamental objectives which underlie the Order Scheme. There is no guarantee that any of them would be acceptable to Arvin. The need for land swaps reinforces the fact that Phase 4 requires a comprehensive approach.

Whether there is a compelling case in the public interest

206. Arvin argues that as the CPO is not linked to the outline planning permission, the AA cannot rely on the importance of delivering a specific number of dwellings. Arvin argued that there is no need for the housing which the Order Scheme would deliver in order to meet Borough or LP targets.
207. This is wrong. While it is usual to have a planning permission in place, CPOs are rarely tied to delivery of the permission relied upon. This is especially true in larger regeneration schemes where the final scheme is likely to change. The permission does, however, provide evidence of the AA's intentions, the scale of the benefits, and the likelihood of it happening. In this case the primary driver is the BRRP and the planning permission shows that the Order Lands would provide 1,575 dwellings of which 40% would be in Phase 4. If Phase 4 is reconfigured in some way, the total number of dwellings is unlikely to change dramatically, especially as the policy imperative is to achieve more rather than less.
208. The AA does not dispute Arvin's contention that the housing at Blackwall Reach is not necessary in order for the Borough to demonstrate a five-year housing land supply. However, this contention does not demonstrate that there is not a need for the housing that the scheme would provide. The policy position is very clear: The LP refers to a "desperate" need for more homes (paragraph 3.11); paragraph 3.19 highlights the significance of the ability of Opportunity Areas to exceed

housing outputs as anticipated in the SHLAA; paragraph 3.21 refers to the importance of using housing targets as minimas; paragraph 3.3 refers to the "pressing need" for more homes and urges Boroughs to "achieve and exceed" the relevant minimum borough targets; and paragraph 3.4 requires Boroughs to optimise housing output. In addition Figure 24 of the CS identifies Blackwall as a location for very high housing growth the development of which is needed to meet the "significant housing challenges" faced by the Borough.

209. More recent documents indicate that the problem is more serious than the LP suggests with the draft *London Housing Strategy* (November 2013; Document CD B19 p3) describing the shortage of housing in London as "perhaps the gravest crisis the city faces". The draft Strategy's projections are carried forward to the draft FALP which concludes that London is likely to need some 49,000 to 62,000 more homes per year.
210. The implications for LBTH are clear as FALP indicates the need in the Borough will rise from the LP figure of 2,885 dwellings per year to 3931. This has to be read in the context that part of LBTH has been moved from the Borough to the LDDC so the larger target has to be met from a smaller area.
211. Concerning affordable housing, the LP requires Boroughs to maximise affordable housing provision. The CS identifies that there is currently an affordable homes shortfall of 2,700 homes per year while rates of over-crowding (16.4%) greatly exceed the national average (2.7%). The *LBTH Housing Evidence Base* (Document CD B12 p58) identifies 23,400 households on the waiting list of which 48% are in priority need and 9,500 are overcrowded. If the Order Scheme were built today, it would not even meet the needs of those in temporary accommodation.
212. Concerning Arvin's case that the Order Scheme is not needed to meet the five year target, the LP was adopted before the Framework so did not have paragraph 47 of the Framework in mind. Achieving targets will not necessarily meet need, but this does not place a development plan in conflict with the Framework. In the case of London, the need is as identified above yet the target is 42,000 per year. FALP will therefore not meet the objectively assessed need. The same point is true of the affordable housing target. That is why targets are minima.
213. All the evidence points to the conclusion that simply meeting housing targets is not enough. Targets are minima and the LP exhorts boroughs to go beyond them wherever possible. The AA invites the Secretary of State to conclude that the public benefits of the Order Scheme are very substantial indeed.
214. Against this needs to be set the private loss of Arvin who have a leasehold interest in part of the Order Lands with 37 years left to run. In financial terms the loss would be compensated for in the normal manner. The more important question is the impact on Arvin's business. The AA acknowledges Arvin's importance as a local employer and the fact that Arvin if the Order is confirmed then they would need to relocate. However, it is unlikely that the Arvin land would be needed before 2018. In the meantime the AA has made an offer to buy Arvin out, on three months notice, at any point before that time. There is ample time and there is finance for Arvin to find and relocate to alternative premises.
215. In the short time that an agent has been instructed, one suitable property has come on the market (Cody Road) which the agent would have regarded as

suitable for his client. The fact that this site was subsequently let on a short term lease does not tell the terms that Arvin might have been able to negotiate. Mr Matthews' Supplemental evidence (Document AGC9) identifies 20 more properties that meet Arvin's basic search requirements which shows the market to be active and that there is a continually changing supply of property stock available.

216. The AA acknowledges Arvin's current enviable situation with a peppercorn rent for a site adjacent to the DLR. The AA has concerns about the site search that has been carried out so far. The agent was instructed in October 2013 for the purposes of this Inquiry; Arvin had not previously considered relocation. One of the criteria for the site search is the ability of a site to accommodate B2 use, which Arvin now say could be moved to Scotland. Some sites have been rejected on the grounds of insufficient open storage, whereas Arvin has suggested that covered storage would be acceptable.

217. Although Arvin had been advised that it risked being seen as unreasonable if it did otherwise, Mr Passey made it clear that sites 10 miles away would not be acceptable. Indeed, he considered that as Arvin sells itself as being located at Canary Wharf, even Canning Town would not be acceptable, notwithstanding his agent's views on the acceptability of Cody Road.

218. The rejection of Canning Town is revealing as there are industrial estates there with new warehouses and areas of open storage. It is close to Tower Hamlets and has good access to the strategic road network. Much of the accommodation is in easy walking distance of the DLR at Star Lane. Land is designated as an employment area and so is less likely to succumb to residential pressures.

219. The AA finds it difficult to avoid the impression that Arvin is looking for an exact replica of their existing site. This is completely unreasonable. If Arvin showed reasonable flexibility there is no reason as to why an alternative site should not be found. If the CPO is confirmed, and as Mr Matthews' accepted, the prospect of Arvin ceasing business is slim.

220. Concerning Arvin's submission that the CPO should be a last resort, the Order Scheme as it stands in Phase 4 depends upon Arvin's site. Arvin's objection involves delivering a different scheme. The AA is open to discussion about the possibility of retaining Arvin at Blackwall Reach but there is still no measure of agreement as to how this could be achieved in a way that is acceptable to both sides. If Arvin remains in situ, Phase 4 could not be delivered and this represents 40% of the dwellings. No other option has been tested and the AA does not accept that it is possible to accommodate Arvin within the Order Lands without the loss of a significant number of dwellings. Some of the AA's witnesses accepted that discussion could and should take place; others were less enthusiastic. The fact that the parties may be willing to talk is not, on its own, enough to warrant omitting the Arvin site from the Order. The Secretary of State would need to be satisfied that there is likely to be a mutually acceptable solution.

221. However, it is not simply a question of LBTH and the GLA coming to an agreement with Arvin. An acceptable scheme would be likely to need a new planning permission; this would have to be assessed against the development plan policies. There would need to be agreement on the terms on which Arvin occupied their new site and there may be a need for the development partners to

review their position. While it may be possible to reach agreement on all these things, it is distinctly possible that it will not.

222. Arvin's is not a conventional objection to a CPO. Arvin's contention is that it should be given, on unknown terms, some other portion of the Order Lands in exchange for some, or all, of its own site. Arvin's own evidence shows that the regeneration of Blackwall Reach requires a comprehensive approach. This point was raised very late in the day. During the discussions under paragraph 24 of the Circular, Arvin's only alternative was for them to remain on their site. If all of Phase 4 were to be omitted from the CPO, then the AA would not be able to deliver either the Order Scheme or any other scheme that accommodates Arvin.
223. Given the undisputed benefits that Phase 4 would deliver, there is a compelling case in the public interest, which outweighs the impact on Arvin and all other landowners, and the Order should be confirmed in its entirety. If the Secretary of State is against the AA on this, and considers that there is merit in Arvin's case, then three further points need to be considered: how does this impact on the CPO in respect of Phases 1-3; how does this impact on the CPO in respect of the remainder of Phase 4; and does this mean Arvin should be excluded or is there another way forward? Each question is considered in turn.

The impact on Phases 1-3

224. Even if the Secretary of State sees merit in Arvin's case, he should still confirm the CPO insofar as it relates to Phases 1-3. These phases are physically and financially deliverable without Phase 4 and would bring very substantial benefits on their own. Arvin supports the wider CPO; Arvin accepted that if its objection meant the loss of Phases 1-3 then this would weigh against their objection.

Impact on the remainder of the Phase 4 land

225. From the perspective of both the AA and Arvin, it is important that the Secretary of State confirms the CPO over the remainder of Phase 4. These will be needed irrespective of whether they are being acquired to deliver the Order Scheme or to deliver a variation of it which retains Arvin at Blackwall. In so doing it will be necessary to consider the extent to which the tests in the Circular are met. This would mean addressing questions such as whether there is a reasonable prospect that an alternative scheme will come forward; and whether the purpose for which the acquisition of the other Phase 4 lands fits in with the planning framework. This is especially important in respect of the Criterion land, necessary to be acquired to accommodate Arvin. It would be dangerous to assume that the Arvin land can be dropped out of the CPO without any consideration of how that bears on the justification for acquiring the remainder of Phase 4.

Does this mean that the Arvin land should be excluded from the CPO, or is there another way forward?

226. In the AA's opinion it would be impossible for the Secretary of State to conclude that it will be possible to come with a mutually acceptable solution based upon the evidence available. Even with goodwill on both sides, there is a distinct possibility that a mutually acceptable solution will not be found. If that is the case, and the Arvin land had been excluded from the CPO, the AA would have to make a fresh Order.

227. There is an alternative. Under section 13C the Secretary of State has the power to confirm the CPO in parts. While the indication in the Circular is that it is designed to deal with cases where the Secretary of State felt it appropriate to allow time to see whether an impediment to development could be overcome, the power is widely drafted and confers a wide discretion. There is no legal reason why it could not be used in this case. As the judgement in *Neptune Wharf* (Document DOC 19) observes, s13C permits deferral of a decision where the decision maker is faced with uncertainty. Such situations are not limited to those where there is an impediment. In this case the uncertainty relates to whether there is a mutually acceptable solution which retains Arvin at Blackwall Reach. In this case the alternative proposal was submitted very late in the day and it would be wrong for the AA to have to start the CPO process again.
228. The AA rejects any assertion by Arvin that the procedure may be used to make up for its failure to follow Circular advice on engagement and consultation. Resorting to s13c involves no pre-judgement by the Secretary of State of the eventual outcome. If agreement is not reached, the AA knows that the Secretary of State may well decide not to confirm the Order. Arvin's criticism that the use of s13C only arose during cross examination is surprising; in the *Neptune Wharf* case the Secretary of State decided to go down the s13C route without it having been raised by either party.
229. If the Secretary of State considers that it may be possible to devise a scheme that delivers everything in terms of the Order Scheme and allowing Arvin to stay in Blackwall Reach, the sensible way forward is to allow the CPO for Phases 1-3 but reserving judgement on the Arvin land and setting a timetable for the conclusion of negotiations. This would ensure that Phase 4 is not unduly held up.

Written Representations by Statutory Objectors

This section contains the gist of the objections to the CPO made in writing and the Council's responses

Objector Name: UK Power Networks

Plot Numbers: Plots 17, 22, 37, 38 & 68

Addresses: Woolmore Street; transformer chamber east of Cotton Street; sub station south of Woolmore Street; and transformer chamber east of 105-214 Robin Hood Gardens.

Legal Interest: Owner, lessee, occupier

Case for the Objector (Documents GD1, DOC2 & DOC6)

230. London Power Networks Plc is the owner and/ or occupier of premises in the land to be acquired under the CPO. It is entitled to the benefit of rights in, over, on or under such land and is the owner of electric lines and/ or electric plant in, on, over or under the land to be acquired. It objects to the Order unless at the cost of the AA there are first provided to it on no less favourable tenure suitable alternative sites and suitable alternative rights in, on, over or under land in substitution to those to be acquired and in, on, over or under which there are first installed and commissioned electric lines and electrical plant in substitution for those in the land to be acquired. This is to take place before that land is

acquired so that it can carry out its statutory functions and contractual obligations no less efficiently than previously.

231. UK Power Networks objected as its apparatus is affected by the proposed CPO. The company is in correspondence with LBTH to enter into a compromise agreement but agreement has not been reached to date.

Response by the Council (Documents CD4 (D3), LBTH7, LBTH10 & DOC23)

232. London Power Networks has long leases on 3 sub stations located within the Order Lands. These sub stations serve only the existing buildings on the Robin Hood Gardens Estate and will become redundant when the buildings are demolished. To enable delivery of the scheme, Swan is seeking to procure a new provider for electricity to the new development through a dedicated Energy Service Company. The AA is seeking to achieve agreement with the Objector to protect essential apparatus and where appropriate compensate the Objector for their loss of land interest.

233. It is possible to build out the Order Scheme in a way which protects the Objector's interests either by diverting their equipment or through a build-over agreement. The AA has offered the standard contracts for the protection of their equipment. The Objector has not provided any explanation for its position to the Inquiry.

Objector Name: National Grid

Plot Numbers: n/a

Address: n/a

Legal Interest: Statutory undertaker

Case for the Objector (Document GD1)

234. National Grid has identified that it has apparatus in the vicinity which may be affected. It objects on the grounds that the level of protection currently afforded to the apparatus it has in the subject land may be diminished.

Response by the Council (Documents CD4 (D3), LBTH7, LBTH10 & DOC23)

235. The AA is seeking to enter into a standard asset protection agreement with the Objector. Swan is working closely with the AA to seek to negotiate agreement. As with the interests of UK Power Networks, it is possible to build out the Order Scheme in a way which protects the Objector's interests either by diverting their equipment or through a build-over agreement. The AA has offered the standard contracts for the protection of their equipment. The Objector has not provided any explanation for its position to the Inquiry.

THE OBJECTIONS TO THE s19 CERTIFICATE

236. All the objections to this were withdrawn before the close of the Inquiry.

INSPECTOR'S CONCLUSIONS

The numbers in square [] brackets refer to earlier paragraph numbers in this report

INTRODUCTION

237. LBTH, the AA, is seeking to assemble land in the ownership of the Borough Council and the GLA for the purpose of carrying out a comprehensive redevelopment of the Blackwall Reach area. There are complementary proposals for the stopping up of various highways, including footways and some undedicated public footpaths and undedicated potential public rights of way that cross the Order Lands. A Certificate is sought to allow the compulsory acquisition of an area of public open space and for the provision of exchange land.

238. The Order Lands extend to some 6.6ha; the Order Scheme covers a rather larger area of 7.7ha. A significant proportion of the Order Lands are already owned by LBTH (36%) and the GLA (20%), while a further 24% is highway. At the close of the Inquiry there were three outstanding objections to the CPO; three objections to the SUOs; and none to the s19 Certificate.

239. Outline planning permission for the redevelopment of the site was granted in March 2012. This is described as *"alterations to and demolition of existing buildings, site clearance and ground works and redevelopment to provide:*

- *Up to 1,575 residential units (up to 191,510 sq m GEA – Use Class C3);*
- *Up to 1,710 sq m (GEA) of retail floorspace (Use Classes A1 – A5);*
- *Up to 900 sq m of office floorspace (Use Class B1);*
- *Up to 500 sq m community floorspace (Use Class D1);*
- *Replacement school (up to 4,500 sq m GEA – Use Class D1); and*
- *Replacement faith building (up to 1,200 sq m – Use Class D1).*

The application also proposes an energy centre (up to 751 sq m GEA), associated plant and servicing; provision of open space, landscape works and ancillary drainage; car parking (up to 340 spaces in designated surface, podium, semi-basement and basement areas plus on-street); and alterations to and creation of new vehicular and pedestrian access routes.

All matters associated with details of appearance, landscaping, layout and scale and (save for the matters of detail submitted in respect of certain highway routes, works and/ or improvements for the use by vehicles, cyclists and pedestrians as set out in the Development Specification and Details of Access Report) access are reserved for future determination and within the parameters set out in the Parameter Plans and Parameter Statements."

The application was accompanied by a completed s106 Agreement.

THE COMPULSORY PURCHASE ORDER (CPO)

Procedural and preliminary matters [6, 43, 88-90, 160]

240. A CPO should only be made if there is a compelling case in the public interest and the purposes for which it is made should sufficiently justify interfering with

the Human Rights of those with an interest in the land affected. The requirements of Section 226(1)(a) of the Act are that the Acquiring Authority *"think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land"*.

The Order Schedule and Map [6]

241. The Council confirmed that all of the statutory formalities had been complied with and there was no suggestion by any objector to the contrary. I have no reason to come to any different conclusion.

Proposed Modifications [4, 25, 26]

242. TfL's objection to the CPO will be withdrawn if the Secretary of State accepts the proposed modifications to the Order; the AA has accepted them. They involve the removal from the CPO (to the extent that they fall within the CPO) of the Blackwall Tunnel and TfL Plots numbered 88, 89 and 90. In addition, the following modifications in respect of column 2 of Schedule 1, Table 1 are sought:

- Plots 8, 9, 10, 11, 12, 13 and 15 to the "western" boundary of Robin Hood Lane are amended to refer to the "eastern" boundary of Robin Hood Lane;
- Plot 81 is amended by the deletion of the wording "including the tunnel approach retaining wall along the western boundary of Robin Hood Lane";
- Plot 106 is amended by the insertion of the wording at the end of the existing text the words "and any relating retaining walls of Aspen Way and of the Preston Road roundabout"; and
- Plot 108 is amended by the insertion of the wording at the end of the existing words "excluding all those rights and interests owned by TfL in and relating to the Blackwall Tunnel and any related structure".

243. These modifications have all come about through negotiations between the AA and TfL. No objections have been raised to them and it is recommended that the Order be modified accordingly.

Consultation and Negotiation [107-112, 161-185]

244. There have been proposals for the comprehensive redevelopment of the Blackwall Reach area since at least 2007. This has afforded many opportunities for consultation and for meaningful dialogue between the AA and local residents, businesses and organisations. Some consultations and negotiations have clearly taken place and been successful, as demonstrated by the relocation of the Mosque to new purpose-built premises and the withdrawal of Mr Aziz's objection during the Inquiry. The only objection about consultation and negotiation raised at the Inquiry came from Arvin.

245. As long ago as 2007 the AA consulted local residents and businesses on the BRRP Draft Development Framework; GL Hearn responded on behalf of Arvin. The letter says that Arvin was happy to continue trading from their site but also says that a redevelopment of the Arvin site as a standalone development would be viable commercially. In the summary at the end of the letter it is quite clear that Arvin supported the aspirations and principles of the Draft Development

Framework but they did not support it in detail as they considered that their site could and should be developed independently.

246. In a follow up letter a few months later, sent before the Council's Cabinet considered the Development Framework, Arvin make it clear that notwithstanding the earlier comments made on their behalf by GL Hearn, Arvin wished to stay on their site. Based upon the evidence to the Inquiry and the contents of the Correspondence file (Document Series E), this has remained their consistent stance from that date (February 2008) until today.
247. Paragraph 25 of the Circular refers to the AA undertaking informal negotiations in parallel with making preparations for a CPO. It also refers to treating the concerns of those whose interests are affected with respect. Paragraph 16(iv) of Appendix A of the Circular, in considering whether the purpose for which the AA is seeking to acquire land could be achieved by any other means, says that this may include considering the appropriateness of any alternative proposals put forward by the owners of the land. Given Arvin's long-standing insistence on staying put and their important contribution to the economic well-being of the Borough, it is perhaps surprising that there have been no meaningful discussions between the AA and Arvin about alternative proposals.
248. While the AA has undoubtedly had discussions with Arvin, these have all been based upon the desire of the AA to acquire the Arvin site and involve the relocation of the business elsewhere. The AA does not appear to have ever given serious consideration as to whether a scheme could be devised that would have enabled Arvin to remain on the Order Lands. I acknowledge that the same comment could be made in respect of the other business occupiers within the Order Lands. It is also true that Arvin, while stating as long ago as 2007 that their site could be redeveloped in isolation, have never come up with an alternative scheme or submitted any plans to the Council for such redevelopment. Indeed, it was only during the adjournment in early 2014 that any schemes were drawn up to ascertain whether or not it would be possible to achieve the AA's aspirations and retain Arvin on the Order Lands, if not necessarily on their existing site.
249. These schemes, surprisingly, were not drawn up in consultation with Arvin despite being put forward by one of Arvin's witnesses. At the Inquiry none were identified by Mr Passey, a Director of Arvin, as being acceptable without further "tweaks", although the nature of these was never disclosed. No alternative has been tested and it is probable that there are many possible variations.
250. I have also had regard to Arvin's very late offer to move, at the AA's expense, its tile manufacturing equipment from Blackwall Reach to its Glasgow site. This would ensure that the use was wholly within Classes B1/ B8 with no B2 use. This offer was only made during the Inquiry but it could have the effect of removing a serious obstacle to Arvin being relocated to a site close to housing. Such relocation would also enable LBTH to impose further conditions on any planning permission for a resited Arvin to control potential harm to residents.
251. This seems to be a situation in which there may be alternative solutions that could achieve the objectives of the AA in terms of delivering a comprehensive redevelopment and providing a sufficient quantum of new housing, while also retaining Arvin within the Order Lands (albeit not on their existing site).

252. Paragraph 24 of the Circular says that the compulsory purchase of land is intended as a last resort in the event that attempts to acquire land by agreement fail. Due to the failure of negotiations thus far and the failure to consider any alternative schemes until after the Inquiry had opened, I am not convinced that the point of "last resort" has yet been reached. This is considered further below.

Justification for the CPO [43-51, 88-90]

253. The Council's purpose in making the CPO is to "to facilitate the delivery of a comprehensive redevelopment of the Blackwall Reach area including the delivery of a significant quantum of new housing, which is needed in the Borough. In summary the overall scheme will provide for the redevelopment of the area and deliver up to 1,575 new residential units, retail, office and community floorspace (the scheme). The Scheme will also include a re-configured and improved public open space along with public realm improvements and improved linkages with the wider area and transport infrastructure. The scheme also delivers an associated energy centre and car parking along with an expanded school and a replacement mosque". I now consider that purpose against the various factors that the Secretary of State can be expected to consider in any decision about whether to confirm an Order made under Section 226(1)(a) of the 1990.

The Adopted Planning Framework [52-53, 54-62, 97-106]

254. The development plan includes the LP, the CS and the MDD DPD. The scheme is in accordance with Policy 1.1(B) of the LP which says that the development of east London will be a particular priority to address the existing need for development and regeneration. East London is identified as the location of the largest opportunities for new homes and jobs. This is carried through in the identification of the site within the Lower Lea Valley Opportunity Area, where Policy 2.13 (B)(b) says that development should seek to optimise residential and non-residential output and densities and, where appropriate, contain a mix of uses. Blackwall Reach lies within an Area for Regeneration as identified in Policy 2.14 of the LP. These comprehensive proposals for housing-led regeneration of the area accord with the thrust of all these policies.

255. The area has long been identified as an area for comprehensive regeneration. The Council's Cabinet approved the BRRP: Development Framework in 2008. It covered a larger area than the current Order Lands and sought around 2,500 to 3,000 new homes in addition to, amongst other things, a variety of new business premises. It indicated that the height and massing of new buildings would increase towards New Providence Wharf and East India Dock.

256. The document identified that it was capable of accommodating 10,000 to 15,000 sq m of commercial floorspace in addition to the housing. This is subject to the caveat that the figures are indicative and will change as further detailed design is carried out. That seems a reasonable position given that the early stage that the Framework had reached at the time. The subsequent reduction in the site area has resulted in a significant reduction in the amount of housing. While the reduction in the amount of commercial floorspace has been even more pronounced, I do not consider that the resultant quantity can reasonably be described as a token amount.

257. The proposals for the area have since been carried forward through later plans and although the scale has been reduced from that originally intended, it remains

a housing led scheme. In the CS, Blackwall is shown as an area for "very high (residential) growth" with Policy SP02(1) (a & b) identifying Blackwall as a focus for new housing and for direct public investment in housing. The BRRP is set out as a means of implementing the strategy. Local Area Policies LAP7 & 8 of the CS relate specifically to Blackwall and advise that it will undergo transformation through housing growth and investment.

258. The more recently adopted MDD DPD (2013) includes a number of Site Allocations, including Blackwall. It identifies the 7.2 ha Order Lands although in the list of existing use(s) it fails to mention the uses taking place on the Arvin site. It seeks a comprehensive mixed-use development to provide a strategic housing redevelopment. The proposals include commercial floorspace. The evidence base refers back to the BRRF (2008).
259. The adopted version of Policy DM15(1) of the MDD DPD, which was adopted after the Council resolved to approve the outline planning permission for the Order Scheme, says that development should not result in the loss of active and viable employment uses. However, paragraph 15.4 of the adopted version says that this part of the policy does not apply to site allocations. Nonetheless, Policy DM15(2) says that development which is likely to displace an existing business must find a suitable replacement accommodation within the borough unless it can be shown that the needs of the business are better met elsewhere.
260. I conclude that the Order Scheme is in line with the development plan as a whole. While the amount of development is less than that originally envisaged this is due in part to a reduction in the site area and the quantum of housing has also been reduced. At the time that outline planning permission was granted there was some conflict with the (then) emerging MDD DPD Policy DM15(1) but the policy has been clarified in the adopted version by paragraph 15.4 which makes it clear that this part of the policy does not apply to site allocations. There is likely to be some conflict with MDD DPD Policy DM15(2) in that it seems probable that Arvin will not be able to be relocated to a suitable alternative site within the Borough unless it can be resited within the Order Lands. Overall, however, the Order Scheme would accord with the development plan.

The Well-being considerations [63-65, 136-141]

261. The power to compulsorily purchase land under Section 226(1)(a) of the Act must not be exercised unless the acquiring authority think that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of its administrative area.
262. The Order Lands largely comprise a residential area to the north and a commercial area to the south. The residential part is dominated by two substantial blocks of flats that were built in the 1960s in concrete brutalist architecture. The buildings are now in a deteriorating state of repair and have poor internal layouts and poor thermal insulation. Unchallenged evidence from the AA is that it would cost about £20m to bring them back into good repair; this would not improve the layout. They are sited either side of the Millennium Green, a grassed mound with a number of maturing trees. It provides an area of green space in an otherwise harsh environment, but has very limited recreational or amenity value. The toddlers' play area and the games area, while within the boundary of the outline planning permission, lie outside the Order Lands.

263. These blocks, together with the Millennium Green, the adjoining houses and a more recent block of flats, are of relatively low density and make inefficient use of urban land in a highly sustainable location. My site visits demonstrated that they stand out in this area as being unattractive buildings that contribute little to the rapidly changing character of the surrounding areas and contrast poorly with the modern buildings to the south and east and at Canary Wharf further to the west.
264. The commercial area to the south comprises a number of low rise buildings and open parking and storage uses that again contrast with their surroundings. The low density of the uses, the poor quality of many of the buildings and their boundary fencing, and the prominent advertisement hoardings all contribute to a character of neglect. The area is visually dominated by the viaduct for the DLR and the flyover that carries Aspen Way, and the high rise buildings to the south, east and west. While it adjoins the Naval Row Conservation Area, this has relatively little impact on the character of the Order Lands as a whole.
265. Concerning the economic well-being of the area, the proposals would substantially increase the number of dwellings (from 252 to up to 1,575) with a resultant increase in expenditure in the immediate area. There is some dispute as to the exact impact on employment in the area as, for example, the new offices would be occupied by Swan with some staff transferred from their nearby offices at Chrisp Street. However, there is no doubt that there would be scope for an increase in permanent employment opportunities, in part due to the significant increase in the size of the school. The total amount of commercial floorspace to be provided has been very substantially reduced from that set out in the BRRP in 2008. However, there has also been a decrease in the number of dwellings as the land over the tunnels is no longer to be developed. There would also be a significant number of jobs associated with the building works; as this is a long term project, many of these jobs would be likely to last for many years.
266. Against this increase in employment opportunities must be weighed the loss of existing employment. In particular, Arvin employs some 71 persons on their site. This is a very successful company that has been on the site for over 43 years. The company pays good salaries and has many long serving employees. It also provides a similar number of jobs for sub-contractors who use the site as a base during contract work, mostly involving the refurbishment of supermarkets. The loss of Arvin reduces the impact of the proposals on the economic well-being of the area, but overall the scheme would be beneficial in this regard. Nonetheless, a scheme that provided a similar amount of housing and enabled Arvin to remain within the Order Lands would significantly improve the economic well-being.
267. Concerning the social well-being of the area, there is no dispute that the Order Scheme would be beneficial. It would provide up to 1,323 additional dwellings; some 44% of the total number of new dwellings would comprise affordable housing. Notwithstanding the fact that the Borough has an identified five-year housing land supply, the provision of such a substantial amount of additional housing would be highly beneficial in a Borough with a severe housing shortfall. There would also be improvements in the quality of the housing.
268. There would be further benefits arising from a larger primary school, as well as a new neighbourhood centre, mosque, public square and community centre. The improvements to the Millennium Green would provide a usable area of public

open space within the heart of the community. All these factors would contribute towards improving the social well-being of the area.

269. With regard to the environmental well-being of the area, most of the dwellings in the Robin Hood Gardens Estate are of low environmental quality. The blocks and their immediate surroundings are of generally poor visual quality with the Millennium Green failing to provide either a usable or a visually attractive setting. The Order Scheme is likely to very substantially improve the visual appearance of the area and bring it up to the high standards of its surroundings. The new dwellings would meet modern standards while the proposed combined heat and power plant would be likely to result in significant energy savings. The proposals would make a positive contribution to the environmental well-being of the area.
270. Overall, therefore, and for the reasons set out above, I conclude that the Order Scheme would make a positive contribution to the achievement of the promotion of the economic, social and environmental well-being of the area. The contribution would be even more positive were a scheme to be devised which allowed Arvin to be incorporated within the Order Lands.

Alternative means [75-76, 113-120, 121-125, 126-127, 136-141, 186-205]

271. The Order Scheme has evolved through a lengthy process over many years. It forms part of the development plan and has the benefit of outline and, in part, full planning permission.
272. It seems that there are four possible options in respect of the objection by Arvin. The first would be for the Order to be modified to omit Arvin in line with their objection. This would allow Arvin to carry out any redevelopment of their site themselves. The second would be for the Order to be modified by the omission of all, or part, of Phase 4. This would enable Phase 4 to be reconsidered to see whether Arvin could be retained in some shape or form. The third option would be for the Order to be confirmed as it stands, enabling the comprehensive redevelopment of the area in accordance with the outline planning permission. Finally, there is the s13C option, in which the Order could be confirmed in stages in accordance with an approved timetable. In this option the Order could be confirmed now in respect of Phases 1-3, with Phase 4 held back for determination at a later date. Each of these options is considered in turn.
273. The first option, involving the modification of the Order to omit the Arvin land, would result in Arvin achieving their objective. This would give Arvin the option of redeveloping their land themselves, in accordance with the November 2007 letter on their behalf from GL Hearn. However, it has been made very clear throughout the Inquiry and in the correspondence and meetings that preceded the Inquiry that Arvin would prefer to remain where they are. If their site was to be omitted from the Order, there would be nothing that the AA could do to ensure that any redevelopment of that land ever took place. Since Arvin first suggested redeveloping their site themselves, some 6½ years ago, there has been no evidence to show that any efforts have been made to facilitate or commence such redevelopment. Any such redevelopment would be likely to involve Arvin having to relocate to a site outside the Order Lands. The difficulty in finding a suitable alternative site was one of the planks of Arvin's case at the Inquiry.

274. There are other difficulties associated with this option. In particular, Arvin only have 37 years unexpired on their lease and I agree with the AA that it may prove to be difficult to obtain finance for a residential scheme on that basis. Without any extension to the lease, and there is no evidence to suggest that an extension would be forthcoming, the development would be likely to have a maximum life of less than 35 years. Another difficulty is that much of the site is over the bore of the southbound Blackwall Tunnel. This is a major constraint that would be likely to significantly increase building costs; the AA proposed a road over the bore and has deleted the original intention of building over the tunnel entrance on grounds of excessive costs.
275. It is notable that a witness for Arvin, Mr Swift, produced an option that included Arvin remaining in situ. However, this scheme appears to acknowledge that in order to disrupt the Order Scheme as little as possible and minimise the number of dwellings lost, some of the Arvin land would still need to be used for the redevelopment. It is not clear how this could be achieved without a CPO, given Arvin's objection to the CPO and the poor relationship between Arvin and the AA. Mr Swift also showed physical alterations to the appearance of the Arvin site but he was unable to explain how such improvements could be ensured.
276. If the Arvin site was to be left in its present use and condition, there would be a significant impact on the Order Scheme. It would not be possible to build Phase 4 in accordance with the planning permission. There would also be visual harm arising from the retention of this office/ industrial/ storage use within a new residential development. The scale and appearance of the Arvin buildings are wholly out of scale with the proposed multi-storey blocks shown on the masterplan for the planning permission. There could also be issues relating to noise/ vibration from the machinery used within the Arvin premises as there are currently no controls concerning, for example, the hours of use. While the machinery is rarely used at present, the operation could become more intensive without the need for further planning permission.
277. For all these reasons, I do not consider that Arvin should remain on their existing site in their present form and that, in this regard, their objection should fail.
278. The second option would see the CPO being confirmed in respect of Phases 1-3, but modified by the omission of all of Phase 4. This would enable the AA to negotiate with Arvin about a redesign of all of Phase 4 such that Arvin could be retained within the Order Lands, but relocated to a different part of the Lands. This would have the benefit of retaining important local employment and enabling the formulation of a redesigned scheme that maximised the number of dwellings. It would enable Arvin to be relocated to a part of the Lands where it had an acceptable visual impact and resulted in no undue harm to living conditions of future residents.
279. There are problems with this option, however, as there is no certainty that there would be any agreement between the AA and Arvin concerning an acceptable layout or acceptable terms on which Arvin moved to a new location. Due to the relationship between the parties, even with a significant amount of goodwill from both parties a lack of agreement seems to be a real possibility. The inevitable outcome of this would be a re-run of this Inquiry after the AA had

made a fresh CPO in respect of Phase 4. That would result in unnecessary delays in the delivery of the development and in additional expense for the parties.

280. There could also be considerable difficulty in negotiating an alternative site for Arvin within the Order Lands due to the fact that the AA would not own all the remainder of the Lands; it would not own the site now owned by Criterion. This is located towards the east of the Order Lands, which, according to Mr Swift's options, is the most propitious location for Arvin to relocate to. I agree with Mr Swift in this regard as this area would not be likely to be surrounded by the new housing. The AA would not be in a position to negotiate the occupation of land it did not own. As there would then need to be a fresh CPO for this part of the Phase 4 land, there would be no certainty that the AA would ever own this land. This option would not provide the necessary certainty for any party; would not obviate the need for a fresh CPO; and, potentially, the need for a fresh Inquiry.
281. The third option would be for the CPO to be confirmed in full (subject to the modifications sought by the AA and TfL), including the Arvin land. The AA could thereby acquire all the land within the Order Lands that it does not own. It would mean that the Order Scheme could be carried out in accordance with the outline planning permission. It would ensure that the AA could deliver the whole of the Order Scheme in accordance with a known timetable. As set out above, this would result in substantial benefits.
282. The principal disadvantage of this would be the need for Arvin to relocate to alternative premises. Evidence to the Inquiry shows that this would not be straightforward, especially if the B2 use is retained and if a site close to their existing premises is required. The need to relocate Arvin would be likely to result in the loss of a significant number of high quality jobs from the Borough as, so far, no suitable alternative nearby sites have been found. There could be jobs lost both within Arvin itself and within the various sub-contractors with whom it works. While a suitable relocation may ensure that the jobs are not permanently lost, they would be lost from this area, harmful to the economic well-being of the area and the Borough as a whole.
283. This option would meet the AA's objectives but the loss of Arvin would be harmful to the economic well-being of the area. However, there is an alternative solution that may enable both the Order Scheme to come forward, albeit in a slightly different form, and for Arvin to remain on the Order Lands.
284. The final option was only advanced by the AA towards the end of the Inquiry, although this did not preclude Arvin from responding to it. This option would involve the Secretary of State confirming the CPO in parts. This would enable the CPO in respect of Phases 1-3 to be confirmed now, and the CPO for Phase 4 to be held back to see whether an impediment to development could be overcome. Considerations concerning the necessary trigger for this, and the timescale, are returned to below. This option has the benefit of providing the AA and Arvin with an opportunity to recommence negotiations within a defined timescale. If the negotiations fail the parties would have to explain to the Secretary of State why they had failed; the Secretary of State could re-open the Inquiry or base the decision on the information received. There would be the opportunity for the Secretary of State to confirm the Order as originally made (subject to the minor modifications set out above) or to exclude the Arvin site. As Arvin lies within Phase 4 of the development, there is sufficient time for the

negotiations and for the parties to come to an agreement while still meeting the timetable.

285. This approach would not be prejudicial to either party; it would also overcome the time issue as there would be no immediate CPO in respect of Phase 4.

Viability and likelihood of implementation [66-70, 128-131, 132-135]

286. The planning framework for the Order Scheme is set out above and there is clear policy support in the development plan. There are, as far as I am aware and to the extent that I am qualified to comment, no legal impediments to the implementation of the Order Scheme. It has the benefit of outline planning permission; Phase 1a has full planning permission. While there was some debate at the Inquiry concerning the need for Conservation Area Consent (now planning permission) for the narrowing of the northern footway to Naval Row, there is no certainty that this even needs such permission or that, if it is needed, that it would not be forthcoming.
287. The construction of the Phase 1a of the Order Scheme has already commenced as the land has been acquired. This part of the scheme comprises affordable housing which is to be used to decant existing residents from Robin Hood Gardens; this factor alone gives a strong incentive to Swan to complete the development. The start of the development is also a demonstration of the AA's firm intent to progress the project in accordance with the submitted timetable. This Phase is being constructed in accordance with that timetable.
288. Concerning viability, the test set out in paragraph 16(iii) of appendix A of the Circular says that "a general intention of funding intentions... will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed". As set out above, the scheme is already proceeding. At the time when planning permission was granted, a viability study concluded that the scheme was viable. An independent assessment of this by BNP Paribas agreed it to be viable. The upturn in the housing market in London makes it probable that in financial terms the scheme is now healthier than when planning permission was granted.
289. The AA's partner, Swan, has an established track record of delivering housing schemes and has a presence in the Borough. Indeed, it intends to transfer some staff into the new development from its Chrisp Street offices.
290. Concerning Arvin's objection, I have taken account of the fact that the AA has offered to enter an agreement to buy Arvin out at any time up until the site is actually required. The AA has confirmed in writing that it has funds in place for this. The amount of funding necessary is not known, of course, as the value of the land is likely to change before the land is purchased.
291. I have had regard to the fact the Blackwall Reach is identified as a project eligible to receive Government funding for loans, but there is no certainty that this scheme will be successful so I cannot give this any weight. Nonetheless, in all the circumstances I am satisfied that the AA has demonstrated that this is a viable project. Recent changes in property values are likely to have increased its viability. Notwithstanding the AA's severe redaction of allegedly commercially confidential information within then PDA, and based upon the professional

assessments that have been submitted, I have no reason to believe that this project cannot be properly funded by the AA and its partners and so delivered.

Overall conclusions on the CPO objections [77, 144-158, 206-229, 230-235]

292. Paragraph 18 of the Circular says that the confirming Minister has to be able to take a balanced view between the intentions of the AA and the concerns of those whose interest in land it is proposed to acquire compulsorily. Concerning the case advanced by Arvin, there is a need to balance the needs of the community to provide further housing, described in the FALP as being a "desperate need", and the needs of a local employer to continue to trade.
293. Notwithstanding the fact that the Council can point to a five-year housing land supply, there is no doubt in my mind that there is a clear and immediate need for more housing. The Order Lands have long been identified as being suitable to provide high rise, high density housing in a highly sustainable location. This provision, together with the associated urban regeneration of the Blackwall Reach area, has been approved by the local community as it forms part of the adopted development plan. This development is undoubtedly in the public interest.
294. The competing interest of Arvin to remain on their land carries considerable force as the Arvin companies are a successful local employer of long standing. Both directly and indirectly Arvin employs a significant number of people and this is undoubtedly of considerable importance to the local economy. No suitable alternative sites to which they could relocate have as yet been identified. They have strong local connections and make considerable use of their proximity to the excellent strategic highway network and public transport infrastructure. It is wholly understandable that they wish to remain in their present location.
295. However, for the reasons set out above, there would be significant and serious harm to the proposed regeneration and to the Order Scheme if the Arvin site was to be simply excluded from the CPO. There is no evidence, however, to demonstrate that the AA has given any consideration to Arvin being relocated to a different part of the Order Lands. The evidence of Mr Swift is compelling in this regard; it is noticeable that some of the AA's witnesses at the Inquiry were supportive of the principle of retaining Arvin within the Order Lands in some shape or form, albeit not on their current site.
296. Section 13C of the 1981 Act provides a general power for Orders to which that Act applies to be confirmed in stages. Further advice is given in paragraphs 53 and 54 of the Circular. Paragraph 53 says that s13C is designed to be used, at the discretion of the confirming Minister, where the Minister is satisfied that the Order should be confirmed for part of Order Lands but, because of some impediment, the Minister is unable to decide for the time being whether it ought to be confirmed so far as it relates to any other such land. While I am not a lawyer, there seems to be no reason as to why this power should not be used in this case; it was put forward as a fall back by the AA at the Inquiry.
297. The Order Scheme is formed of five phases with the Arvin site located within Phase 4. Phase 1a is already under construction and the AA has made it clear that Phases 1b, 2 and 3 could be carried out independently of Phase 4. Indeed, Phase 4 is unlikely to commence on site until 2018 at the earliest so it could form the second stage in a staged confirmation of the Order. It seems reasonable to consider the possible relocation of Arvin to an alternative site within Phase 4 of

the Order Lands to be an impediment to the confirmation of the Order as it stands. By delaying the decision on the CPO insofar as it relates to Phase 4, there would be a window of opportunity for the AA and Arvin to negotiate to determine whether there is a mutually acceptable solution.

298. Overall, therefore, I consider that a strong case has been made by the AA to justify the making of this CPO in respect of Phases 1-3 of the Order Scheme. The outline planning permission gives a clear indication as to how the land will be used; Phase 1a is already under construction. There is support for the CPO in the development plan and adopted policy. The proposed redevelopment of Blackwall Reach is likely to make a positive contribution to the economic, social and environmental well being of the area. I am satisfied that Phases 1-3 of the Order Scheme are viable and likely to be delivered. In respect of these Phases, I am satisfied that a compelling case in the public interest has been made by the AA and that this case outweighs private interests. This part of the CPO represents a proportionate interference with the Human Rights of those with interests in that part of the Order Lands.
299. The remainder of the Order Lands comprises Phase 4, which is, in part, occupied by Arvin. With regard to that part of the Order Lands occupied by Arvin, I am not convinced that the AA has demonstrated that the purpose for which it is proposing to acquire the land could not be achieved by other means. Specifically, it has not considered the possibility of reconfiguring this Phase of the redevelopment such that Arvin could be accommodated along the lines of that indicated in Mr Swift's Option 4 (Document AGC4 pp 24/25). Until this alternative proposal, put forward on behalf of Arvin in accordance with paragraph 16(iv) of Appendix 1 to the Circular, has been negotiated and tested I am not convinced that the AA has made a compelling case in the public interest that outweighs the private loss to Arvin.
300. With regard to the other three objections, that by UK Power Networks will be obviated as its three sub stations will become redundant when the Robin Hood Gardens Estate is demolished. If agreement between the parties is not reached it would still be possible to protect these interests either by diverting their equipment or through a build-over agreement. I consider that in respect of UK Power Networks there is a compelling case in the public interest that outweighs any private loss. The CPO represents a proportionate interference with the rights of the UK Power Networks.
301. The objection by National Grid was made in very general terms. It would again be possible to build out the scheme and protect their interests by either diverting the equipment or through a build over agreement. Once again there is a compelling case in the public interest that outweighs any private loss. The CPO represents a proportionate interference with the rights of National Grid.
302. The objection by TfL will be overcome if the proposed Modifications are accepted.

The Stopping Up Orders [35-38, 78-80, 158]

303. The SUOs are necessary if the CPO is confirmed. They include streets and other land within the Order Lands whose closure would be necessary in order to achieve the purposes for which the CPO would be made, namely the comprehensive redevelopment of the Blackwall Reach Regeneration Area.

304. The SUO(DS) is quite extensive and fragmented. If the CPO is confirmed in full then all the land occupied by businesses that front the roads to be stopped up would be acquired, rendering the roads on their present alignments redundant. Replacement roads are to be constructed where necessary as part of the Order Scheme. These will, where practicable, follow the routes of the bores of Blackwall Tunnel above which it is argued by the AA that it is currently too expensive to build dwellings.
305. If the CPO is not confirmed in full, however, there is a potential problem with Prestage Way and in particular with access to the Arvin site. That site has its main entrance from Prestage Way, although there is a second access from Naval Row. If the CPO were to be confirmed but excluding either the Arvin Site or all of Phase 4, then Prestage Way would still have to be stopped up as it would be necessary in order to facilitate the relocation of services related to Phase 1b of the Order Scheme. However, there is an alternative access from Naval Row, that is currently in use, so I do not consider that Arvin would be unacceptably prejudiced by the confirmation of the SUO(DS).

The s19 Certificate [39-42, 81-84, 236]

306. The land comprises the open space between the principal residential blocks of Robin Hood Gardens. It should be managed by the Millennium Green Trust but in reality only the Council carries out any maintenance. It is generally in poor condition and its utility is limited due to it being dominated by a substantial mound. While the trees provide some visual relief within a harsh residential environment, if the open space was to be re-planned and reconfigured there is sufficient land to provide a useful community-run area of public open space.
307. The proposals would result in a small increase in the amount of public open space but the principal benefits would be securing its long-term future and improving its management. Under the terms of s19(1)(a) the exchange land would not be less in area than the land acquired and it would be equally, if not more, advantageous to the public. It would need to be laid out as open space before the exchange took place. The Council can ensure that the exchange land is laid out to need minimum maintenance in the event that the Council is unable to come to a management agreement with the Millennium Green Trust. It would adjoin the s19(1)(aa) land and so could be laid out as a seamless whole.
308. It seems to me that the land is necessary to ensure that the Order Scheme provides a new central park that would be of high quality and provide access for the surrounding residents. There are no outstanding objections to the grant of a s19 Certificate. The proposals satisfy the statutory tests.

RECOMMENDATIONS

The Compulsory Purchase Order

309. For all the reasons that I have given above, I recommend to the Secretary of State for Communities and Local Government that the **London Borough of Tower Hamlets (Blackwall Reach) Compulsory Purchase Order 2013** be confirmed in stages subject to the Modification as set out in paragraph 25 of this Report. I recommend that the Order in relation to Phases 1a, 1b, 2 and 3, as defined in the Order Scheme, be confirmed now. I recommend that the Secretary of State postpones his consideration of the Order in relation to Phase

4, as defined in the Order Scheme, until either such time as he is notified of the outcome of negotiations between LBTH and the Arvin Group of Companies concerning the retention of the Arvin Group of Companies within the Order Lands or such earlier time as the Secretary of State deems appropriate.

The section 19 Certificate

310. For all the reasons that I have given above, I recommend to the Secretary of State for Communities and Local Government that the Certificate Pursuant to Section 19(1)(aa) and section 19(1)(a) in respect of an area of open space within the Blackwall Reach CPO be issued.
311. However, in the event that the Secretary of State for Communities and Local Government decides not to confirm the CPO then I recommend that the s19 certificate be not issued.

Clive Hughes

Inspector

APPEARANCES

FOR THE ACQUIRING AUTHORITY:

Paul Brown QC	Instructed by Mrs Megan Nugent, Team Leader, Legal Services, London Borough of Tower Hamlets
He called	
Euan Mackay BSc (Hons) MAPM	Associate, Steer Davies Gleave
Niall McGowan MCIH	Housing Regeneration Manager, LBTH
Graeme Lawes BSc(Hons) MRICS	Director Deloitte LLP
John Murphy MCIB	Head of Regeneration, Swan Housing Association
Fred Drabble MRTPI ARICS	GVA
Julian Hart	Lancefield Consulting Ltd (for site visits)
Andy Clarke	Swan Housing Association (for site visits)

FOR THE ARVIN GROUP OF COMPANIES

Peter Village QC	Appointed by the Arvin Group of Companies
He called	
Paul Burley MPh MRTPI	Partner, Montagu Evans LLP
Peter Swift BSc DipLA CMLI	Managing Director, Planit-IE Ltd
Neal Matthews BSc MRICS	Director, Strettons
Daniel Passey	Director, Arvin and Sons Ltd and related companies
Simon Nicol BA MA	Managing Director, Regeneris Consulting
Mark Whitfield BSc (Hons) MRICS	Partner, Montagu Evans LLP

FOR MOHAMMED AZIZ (Objector):

Mohammed Aziz	Local resident
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GENERAL DOCUMENTS (GD)

GD1	Objections to the Compulsory Purchase Order
GD2	Objections to the Stopping Up Order (Bullivant Street)
GD3	Objections to the Stopping Up Order (Ditchburn Street etc)
GD4	Objections to the Section 19 (a) and (aa) Certificate
GD5	Draft SUO (Bullivant Street)
GD6	Draft SUO (Ditchburn Street etc)
GD7	Compliance file
GD8	Statement of Case (LBTH)
GD9	Statement of Reasons (LBTH)

CORE DOCUMENTS (CD)

CD1 (A Series)	A1 to A3: Legislation
CD2 (B Series)	B1 to B27: Policy and evidence documents
CD3 (C Series)	C1 to C10: Council resolution, committee reports and minutes
CD4 (D Series)	D1 to D7: Compulsory Purchase Order
CD5 (E series)	E1 to E29: Planning application
CD6 (F Series)	F1 to F22: Documents

DOCUMENTS SUBMITTED BY ACQUIRING AUTHORITY

LBTH1	Proof of evidence, appendices and summary of Euan Mackay
LBTH2	Rebuttal to the evidence of Peter Swift by Euan Mackay (with appendices)
LBTH3	Proof of evidence and summary of Niall McGowan
LBTH4	Appendices to Niall McGovern's evidence
LBTH5	Niall McGovern's rebuttal proof of evidence
LBTH6	Niall McGovern's supplementary proof of evidence
LBTH7	Proof of evidence and summary of Graeme Lawes
LBTH8	Graeme Lawes' rebuttal proof of evidence (with appendices)
LBTH9	Graeme Lawes' supplementary proof of evidence
LBTH10	Proof of evidence and summary of John Murphy (with appendices)
LBTH11	Proof of evidence and summary of Fred Drabble
LBTH12	Appendices to Fred Drabble's evidence
LBTH13	Fred Drabble's rebuttal proof of evidence
LBTH14	Fred Drabble's supplementary proof of evidence (with appendices)

DOCUMENTS SUBMITTED BY THE ARVIN GROUP OF COMPANIES

AGC1	Proof of evidence and summary of Paul Burley
AGC2	Paul Burley's supplementary proof of evidence
AGC3	Proof of evidence of Peter Swift (with appendices)
AGC4	A3 Volume of appendices to evidence of Peter Swift
AGC5	A3 Volume of Section 5 of Peter Swift's appendices with shadowing omitted
AGC6	Proof of evidence and summary of Neal Matthews
AGC7	Appendices 1, 2, 4-6 of evidence of Neal Matthews
AGC8	Appendix 3 of evidence of Neal Matthews
AGC9	Neal Matthews' supplementary proof of evidence (with appendices)
AGC10	Proof of evidence and summary of Daniel Passey (with appendices)
AGC11	Daniel Passey's supplementary proof of evidence (with appendices)
AGC12	Proof of evidence and summary of Stephen Nicol (with appendices)
AGC13	Stephen Nicol's supplementary proof of evidence (with appendix)
AGC14	Proof of evidence and summary of Mark Whitfield
AGC15	Appendices of evidence of Mark Whitfield
AGC16	Mark Whitfield's supplementary proof of evidence (with appendices)

COMMON APPENDICES TO THE ARVIN GROUP OF COMPANIES

Series A	A1 to A4: Arvin site and surroundings
Series B	B1 to B13: Planning policy and evidence base
Series C	C1 to C44: Other decisions

Series D D1 to D16: Legislation and case law
Series E Correspondence file and Supplemental correspondence file (also Core Document CD F10)

DOCUMENTS SUBMITTED BY MOHAMMED AZIZ

AZIZ1 Statement of objection and covering letter
AZIZ2 Revised statement of objection (April 2014)
AZIZ3 Written answers by Acquiring Authority to questions raised by Mr Aziz
AZIZ4 Letter dated 1 May 2014 withdrawing objection

OTHER DOCUMENTS SUBMITTED DURING THE INQUIRY

DOC1 Letter dated 10 December 2013 from Natural England withdrawing objections to CPO and section 19 certificates
DOC2 Email dated 11 December 2013 from UK Power Networks reiterating objections to the CPO
DOC3 Letter dated 11 December 2013 from Transport for London confirming that its objection to the Order still stands and setting out suggested amendments
DOC4 Emails dated 13 February 2014 from BSKyB withdrawing both objections to s19 certificate
DOC5 Letter dated 31 March 2014 from Jeff Lewis withdrawing objection to CPO
DOC6 Email dated 24 April 2014 from UK Power Networks confirming that its objections to the CPO still stand
DOC7 Suggested racking solutions for storage
DOC8 Letter dated 30 April 2014 from Transport for London withdrawing its objections to the CPO subject to various modifications to the CPO
DOC9 Letter dated 30 April 2014 from LBTH requesting minor modifications to the CPO to accord with agreement with Transport for London
DOC10 Modified CPO
DOC11 Option 1 (Swift Appendices) with bus route added
DOC12 Site visit itinerary
DOC13 Letter dated 20 May 2014 from Winckworth Sherwood concerning site visit and equipment on the Arvin Site
DOC14 Plan showing Blackwall Tunnel Controlled Zones
DOC15 Letter dated 21 May 2014 from National Grid restating objection to the CPO
DOC16 Letter dated 22 May 2014 from Winckworth Sherwood to Inspector
DOC17 Closing submissions on behalf of The Arvin Group of Companies
DOC18 *Prest v Secretary of State for Wales 1983 WL 215478*
DOC19 *Neptune Wharf Ltd & Roadglen Ltd v Secretary of State for Trade and Industry [2007] EWHC 1036 (Admin)*
DOC20 *Lisa Smith, Mary Ellen Reilly & Julia Reilly v Secretary of State for Trade and Industry [2007] EWHC 1013 (Admin)*
DOC21 *Sir Michael Harrison v Secretary of State for Trade and Industry & Others [2007] EWHC 1527 (Admin)*
DOC22 *Hunston Properties Ltd v Secretary of State for Communities and Local Government & St Albans DC [2013] EWHC 2678 (Admin)*
DOC23 *St Albans v Hunston Properties [2013] EWCA Civ 1610*
DOC24 Closing submissions on behalf of the London Borough of Tower Hamlets

<p style="text-align: center;">Cabinet</p> <p style="text-align: center;">19 December, 2017</p>	 <p style="text-align: center;">TOWER HAMLETS</p>
<p>Report of: Ann Sutcliffe, Acting Corporate Director, Place</p>	<p>Classification: Unrestricted</p>
<p>Blackwall Reach Regeneration: New Charitable Trust & CPO Resolution</p>	

Lead Member	Councillor Rachel Blake, Cabinet Member for Housing and Development
Originating Officer(s)	Niall McGowan – Housing Regeneration Manager
Wards affected	Poplar Ward
Key Decision?	Yes
Community Plan Theme	A Great Place to Live

1 **EXECUTIVE SUMMARY**

1.1 This report:

1.1.1 updates the Mayor on progress being made in delivery of the Blackwall Reach Regeneration scheme and seeks authority to proceed with the next steps required, including the setting-up of a new Blackwall Trust that will oversee the new central park and invest in community initiatives; and

1.1.2 seeks authority to make a new Compulsory Purchase Order to acquire the part of the existing Millennium Green which is not yet in the council's ownership, to enable it to be preserved as open space and landscaped, maintained and improved for inclusion in the new central park.

2 **RECOMMENDATIONS**

In respect to the Blackwall Trust, the Mayor in Cabinet is recommended to:

- 2.1 Agree to establish the Blackwall Trust, a charitable company limited by guarantee, and delegate to the Corporate Director of Place, after consultation with the Corporate Director of Governance and Monitoring Officer, the power to take all necessary steps for this purpose including, but not limited to, approving the name of the Trust, governance documents (including the memorandum of association, articles of association and objects), submitting documents and making necessary applications/registrations with Companies House, the Charity Commission, and HMRC.

- 2.2 Authorise the Corporate Director, Place, to nominate up to 2 officers to be appointed as directors and trustees of the company on behalf of the Council, subject to any restriction on local authority control which will be determined once the final structure is confirmed.
- 2.3 Authorise the Corporate Director of Governance and Monitoring Officer to execute any agreements or documents required to give effect to recommendation 2.1 and 2.2.
- 2.4 Authorise the Corporate Director of Place to finalise and grant a 250 year lease of the Millennium Green to the new Blackwall Trust, to be retained as open space, subject to consideration being given to any objections made following advertisement of the intended disposal in accordance with section 123(2A) of the Local Government Act 1972.
- 2.5 Authorise the Corporate Director of Place to transfer to the Blackwall Trust any funds the council has received from Swan Housing Association Limited and which are being held on trust for the Trust.

In respect to the Millennium Green Compulsory Purchase Order, the Mayor in Cabinet is recommended to:

- 2.6 Agree the making, confirming and implementation of a Compulsory Purchase Order under section 226(1)(a) of the Town and Country Planning Act 1990 to acquire plots 61, 71 and 74 (as shown in the map in Appendix 1) which are located within the residual Robin Hood Millennium Green, and currently in the ownership of the Robin Hood Millennium Green Trust, in order to secure its preservation and improve its management.
- 2.7 Note that the Council has made (and will continue to make) a concerted effort to negotiate the acquisition of the Millennium Green land with its Trustees, but that to date these negotiations have proven unsuccessful.
- 2.8 Determine that the use of CPO powers is justified after balancing the rights of the land owners with the need to secure the preservation and improvement of the open space.
- 2.9 Determine that the interference with the human rights of the property owners affected by these proposals, and in particular their rights to the ownership of property, is proportionate, given the adequacy of their rights to object and to compensation (where applicable), and the benefit to the economic, social and environmental well-being of the areas of Tower Hamlets affected by these proposals.
- 2.10 Authorise the Corporate Director of Place to take all necessary steps to implement recommendation 2.6 including but not limited to:
 - 2.10.1 Acquiring the land interests identified in the map at Appendix 1, either by private treaty or compulsorily.

- 2.10.2 Appointing land referencing agents, making the CPO, publication and service of any press, site and individual notices and other correspondence for such making.
- 2.10.3 To apply for a certificate under section 19(1)(aa) of the Land Acquisition Act 1981 to the Secretary of State or, if no certificate is granted, to pursue the compulsory acquisition through the special parliamentary procedure.
- 2.10.4 Seeking confirmation of the CPO by the Secretary of State (or, if permitted, by the Council under any permission or power conferred by the Secretary of State), including the preparation and presentation of the Council's case at any Public Inquiry which may be necessary.
- 2.10.5 Publication and service of notices of confirmation of the CPO and thereafter to execute and serve any General Vesting Declarations and/or notices to treat and notices of entry, and any other notices or correspondence to acquire those interests within the area identified in the plan at Appendix 1;
- 2.10.6 Issuing of General Vesting Declarations or Notices to Treat in respect of the land/interests identified in the map at Appendix 1.
- 2.10.7 Referral and conduct of disputes, relating to compulsory purchase compensation at the Upper Tribunal (Lands Chamber), where applicable.

3 REASONS FOR THE DECISIONS

- 3.1 The Council in delivering its regeneration programme at Blackwall Reach is committed to preserving and improving the large central green space as a park for use and enjoyment by future generations of residents. This commitment was made to residents, and is also contractual in terms of the development agreement and undertakings made to Natural England, the successor body to the Countryside Agency that established the existing open space as a Millennium Green in 2001.
- 3.2 The Council has also undertaken to broaden the regeneration benefits for the expanding local community by establishing a new charitable body with a dual role:
 - 3.2.1 to oversee the new park as its leasehold custodian, ensuring it is preserved as open space in perpetuity and is properly managed and maintained;
 - 3.2.2 to help fund initiatives to improve the lives of local people, long after the physical transformation of the areas is complete.
- 3.3 The decisions requested are necessary to achieve these commitments:

- firstly to set up the required charitable Blackwall Trust to be constituted as a company limited by guarantee; and
- secondly to support by compulsory purchase the acquisition of part of the existing open space which the Council does not yet own, to ensure it can be re-landscaped for continued inclusion in the central park for which the new Blackwall Trust will hold the lease.

4 **ALTERNATIVE OPTIONS**

4.1 The variant options are: not to proceed at all with one or both proposals; or to delay making a decision to proceed. Both proposals are however integral to the delivery of the Blackwall Reach regeneration.

4.2 The consequence of a decision not to proceed, or of a delay in making a decision on either of these matters, would risk achieving a less comprehensive approach to the overall regeneration and could jeopardise the renewal and future management of the green space in a cogent way. Critically it would put the Council in a position where it is unable to deliver the whole site for assembly, in accordance with its obligations under contractual arrangements it has entered into with its development partners.

4.3 **Setting up a new “Blackwall Trust”**

The Council is contractually required to set up the new Blackwall Trust, via its Principal Development Agreement (PDA) with the Greater London Authority (GLA) and Swan Housing Association (Swan), who are the Council’s partners in the regeneration of Blackwall Reach. This PDA was entered into pursuant to a decision of the Mayor in Cabinet on 9th February 2011. The Council has also given an undertaking to Natural England to set up the Trust within a specific timescale and has made various commitments in respect to the ownership and management of the open space and the governance of the Trust in order to guarantee the preservation and maintenance of the land in perpetuity. This undertaking was given in 2013 in order to secure Natural England’s removal of their objection to the London Borough of Tower Hamlets (Blackwall Reach) CPO 2013.

4.4 The vesting by the Council of the western section of the existing Millennium Green in May 2017, following confirmation of an earlier CPO (see paras 5.3.2 – 5.3.3), has triggered a timeline for the Council to establish the new Blackwall Trust within 2 years, or be at risk of having to repay Natural England the £38,000 grant with which it originally established the current Millennium Green. The PDA also requires the Council to establish the Trust “as soon as reasonably practicable”.

4.5 It is logical to set up the Trust now because Swan has paid to the Council the first of 4 tranche payments of £250,000 for the Trust’s operations and, whilst the new central park will not be completed immediately, the Trust, once established, can commence its wider work for the benefit of the expanding local community as described in paras 9.2 – 9.4 below of the report. Any delay in

establishing the Trust would delay the provision of this wider regeneration benefit.

4.6 Need for the Proposed CPO

The present owner of the open space to be acquired is Robin Hood Millennium Green Trust ("MGT"), which was established to own (freehold) and manage a newly created Millennium Green in 2001. As the report explains the MGT is not in a position to maintain its existing land holding; nor could it deliver and then maintain the necessary improvements as part of the overall renewal of the existing green.

- 4.7 To enable Swan to carry out the essential landscaping improvements to this central open space area and so that the Council can grant a lease to the Blackwall Trust to guarantee its retention as open space and to ensure its on-going management, the Council is contractually required to acquire the land for which the CPO is to be made. The provision of the new Trust and the proposed CPO, as set out in the report, are necessary steps to deliver the Council's existing commitments.
- 4.8 Similarly, in the event that negotiations with the Millennium Green Trust fail or do not proceed in a timely fashion, the Council must make the CPO in order to complete its acquisition of the entire Millennium Green as it will need to vest other residual plots of land in the eastern section of the green, for which the Council already has the appropriate consents (to re-landscape / improve management), by December 2018.
- 4.9 Without a CPO for the three plots of land identified the Council would not be able to assemble the whole green and thus would be unable to:
- fulfil its pre-existing obligations as set out above and explained in the report;
 - ensure the comprehensive renewal of the entire existing green, or its future retention as a single open space via a lease to the new Trust;
 - enable future cogent management and maintenance of the whole renewed green.
- 4.10 In such a scenario the Council would have no right to enter onto the green nor to grant a lease of it to the Blackwall Trust, which would mean the regeneration work would remain incomplete. Future management arrangements would be unnecessarily complicated due to the dual ownership of the open space, particularly as the existing Millennium Green Trust accepts that it cannot maintain its existing land holding.

5 BACKGROUND

5.1 Blackwall Reach Project Partnership

5.1.1 Blackwall Reach Regeneration is a flagship Council scheme, comprising eight hectares of homes, former and existing business sites and open space, located between Cotton Street, Aspen Way, the Blackwall Tunnel Approach and East India Dock Road in E14. The project sites are clustered around the Council's Robin Hood Gardens (RHG) Estate in Poplar Ward, in an area that was ranked in the top 2% most deprived in England, in 2010.

5.1.2 The project is a long-term partnership between the Council and GLA, combining their adjoining land holdings and funding the enabling stages, including ongoing land assembly, to comprehensively transform a wider area than would have been possible acting alone. This has enabled delivery of significant numbers of new homes of all tenures. Swan Housing Association was appointed following a competitive procurement exercise in 2011 to deliver the partners' outline scheme in 5 phases: 1A, 1B, 2, 3 and 4. All the partners are joint signatories to a Principal Development Agreement (PDA), under which each party has specific responsibilities.

5.1.3 The scheme is a priority for the Council, to improve the lives of existing residents - many of whom are taking up an "option to remain" - and to create new housing opportunities in a modern and sustainable setting. The regeneration brings in cross-sector resources of more than £430 million to build c.1,575 new homes including:

- 679 affordable homes (51% by habitable rooms)
 - of which 561 (an increase of nearly 300%) are for rent by existing relocating tenants and other registered local applicants, all at social rents.

5.1.4 These replace the original 207 rented and 45 privately owned homes at Robin Hood Gardens. The scheme also increases and improves open space and play space provision, creates new community facilities and generates funding, for example to expand the local Woolmore Primary School, now completed.

5.1.5 Contributions from ground rents plus a phased payment of £1 million from Swan Housing Association as developer will support a new "Blackwall Trust". The Trust will have dual roles to:

- oversee the new central park under a long-term lease from the Council and
- sponsor and develop community initiatives for years to come.

5.2 Blackwall Reach - Scheme Progress

- 5.2.1 A full update on the project, including its finances and the outcome of the Council's CPO process, was provided to the Mayor in Cabinet on 26th July 2016. The scheme is well underway. Phase 1A was completed by Swan in the north-west corner of the site in 2015, providing 98 new homes for social rent and shared ownership, primarily for decanting existing Council tenants and resident home owners from RHG. Swan's new community centre opened in 2016 and the new 3-form entry Woolmore School has also been completed, extending across an enlarged site acquired using Council capital resources, providing places for the much larger Blackwall Reach community as future scheme phases are delivered.
- 5.2.2 Further Building Agreements and lease have been entered into between the partners. Swan is progressing well with the construction of 242 new homes on the Phase 1B site in the south-west corner of the scheme area and has obtained planning approvals to commence Phase 2, incorporating the western blocks of Robin Hood Gardens, and neighbouring Anderson House. The Phase 2 site is hoarded off and demolition work has started, which will continue into 2018. This site is bringing forward 268 new homes, including 114 affordable dwellings that will provide new homes for the remaining residents on the estate who have chosen to stay in the area. Council and GLA officers joined Swan earlier this year as Swan selected architects for Phase 3 of the project (the eastern part of the estate), and Swan will submit designs for planning consideration for an envisaged start on Phase 3 by 2019/20.

5.3 Land Assembly

- 5.3.1 As reported previously the Council and GLA have been engaged in land assembly, particularly to facilitate Phases 1 - 3 of the scheme, including the purchase of sites and properties within their respective freehold areas. To date some 179 tenants have been decanted, including those moving within the regeneration area, and 27 await decant from Phase 3. Of the 45 original home-owners, 39 have sold their properties to the Council, including those moving within the scheme, and 6 remain in Phase 3, including 3 awaiting a new home when Phase 2 is completed.
- 5.3.2 An area-wide (2013) CPO was confirmed for Phases 1 – 3 by The Secretary of State for Communities and Local Government in 2015, including specific approval for the acquisition of the open space that was in the freehold ownership of the Robin Hood Millennium Green Trust. Negotiations with MGT to date for the voluntary disposal of their land interest are summarised in para 6.9.3.
- 5.3.3 Phase 2, including the western section of the existing central open space (Robin Hood Millennium Green) was vested in May 2017, following confirmation of the 2013 CPO. Vesting of the eastern section

of the open space within the Phase 3 area is outstanding and remains necessary. However a further CPO is now required on the basis that the reasons under which the 2013 CPO was originally granted, in respect to parts of the eastern section, have changed: this is because Swan's approved designs for Phase 2 of the project will now retain the renewed central green within its *existing* boundaries, rather than reconfiguring and reshaping the green in order to build on part of it.

- 5.3.4 The vesting of the western section of the Millennium Green following the confirmed CPO has also triggered a 2 year timeline for the Council to establish the new Blackwall Trust. Setting up the Trust is required under the PDA and also under a separate undertaking to Natural England, which retains an interest in the area as the historic funder (lottery monies) of the Robin Hood Millennium Green at its inception. Natural England withdrew its objections to the Council's 2013 CPO on certain conditions, including the Council entering into the undertaking.

5.4 Robin Hood Millennium Green

- 5.4.1 The central green amenity area between the two main Robin Hood Gardens Estate buildings was in Council ownership until it became a Millennium Green in 1999 - 2001, under the national Millennium Green initiative. On 15 June 2001, the Council transferred its freehold land to Robin Hood Millennium Green Trust (MGT) for £1, with a covenant requiring that:

- 1) MGT maintains and manages the property in good order suitable for use as a park/open space.
- 2) MGT uses the open park/space for general public at all times; and
- 3) if it ceases to be used as a park or the Trust desires to sell it then the Council has an option to reacquire it.

- 5.4.2 The existing Millennium Green is a large grassed expanse with tree planting and a high knoll in the middle. During master-planning the Council identified that the green is not landscaped or laid out to the modern standards of an urban park within a high-density urban area. It will need substantial improvements by Swan to be suitable for the larger community in the new development, which will have a higher number of family dwellings. The green is recognised however as a valued amenity for existing residents, including those who are opting to stay in the area and its improvement has been central to the regeneration proposals. The initial proposal had been to reconfigure the green but Swan's approved designs for Phase 2 will now improve and preserve the green within its existing boundaries.

- 5.4.3 The Trust Deed for the Robin Hood Millennium Green sets out the key provisions, being that the "Millennium Green will be used forever for inhabitants for informal recreation play and leisure". It also goes on to quote a "statement of aims" which states that "...it should be able to be enjoyed by people of all ages and abilities, be open and evident to the

locality as well as inhabitants, be an attractive place to take air and exercise and include an area for suitable community events and celebrations and natural areas". The improvements to the green within the regeneration scheme will uphold these principles and the steps proposed in the report will help to achieve this.

- 5.4.4 Initial funding of £38,000 from the National Lottery Fund enabled some improvements works to be carried out to the newly formed Millennium Green, which included tree and shrub planting and the installation of public art features such as a sundial mosaic. Responsibility for maintenance lies with MGT, either by means of fund-raising by the Trustees amongst the local community or by reaching formal agreement with the Council. It is understood that no such arrangement was sought by MGT, which remains legally responsible for - but unable to pay for or deliver - maintenance of the green.
- 5.4.5 As explained in paras. 5.3.2 – 5.3.4 above and in Section 6 below, the Council has now confirmed its 2013 CPO and has vested and taken back ownership of the western section of the Millennium Green. Tower Hamlets Homes is maintaining this whilst still permitting access to MGT to run community events should it so wish. This will be licensed to Swan in due course to carry out the first part of its central park renewal, after which the new green will be restored to its existing boundaries.

6 JUSTIFICATION FOR A CPO

- 6.1 The Council has previously made CPOs to support its own, or its Registered Provider (RP) partners' regeneration projects. The need for this provision arises where acquisition of land interests is necessary to fulfil commitments to deliver new affordable homes and/or to achieve wider regeneration benefits, such as the provision of related infrastructure or community facilities.
- 6.2 In respect of Blackwall Reach the Council has successfully confirmed its 2013 CPO across the Robin Hood Gardens Estate, as reported to the Mayor last year, which includes Phases 2 and 3 of the scheme. As part of the CPO process specific consents were applied for and granted by the Secretary of State (DCLG) to enable the Council's acquisition of the Millennium Green - an area of approximately 7,398 sq metres.
- 6.3 A new CPO is required however because the scheme design in relation to the central open space has changed and different powers must now be used to ensure the acquisition of three specific plots of land which are to be retained as open space. The new CPO is necessary to facilitate the eastern part of the Millennium Green on the basis that the reasons under which the CPO was originally granted, in respect to the eastern section, have changed: Swan's approved designs now retain the enhanced central green - the new park - within boundaries which are contiguous with those of the existing Millennium Green, rather than reconfiguring the green in order to build on part of it as originally envisaged.

- 6.4 Appendix 1 shows how the 2013 CPO has to date been applied to specific plots within the existing Millennium Green. This was done using powers under section 226(1)(a) and 226(3)(b) of the Town and Country Planning Act 1990 and the Secretary of State granting certificates to the Council to acquire the open space as follows:
- 6.4.1 Section 19(1)(aa) was used for land that is to be retained and re-landscaped as open space but needs improvements to management arrangements i.e. the entire western section of the green (plot 59) and part of the eastern section of the green (plots 60,62 and 70) – this equates to around 5,338 sq metres;
- 6.4.2 Section 19(1)(a) was used where construction and some reconfiguration of the existing green's boundaries had been envisaged at the time the application was made i.e. solely in the eastern section (plots 61, 71 and 74) – this equates to an area of 2,060 sq metres.
- 6.5 The Council duly vested the western section of the green (plot 59) in May 2017 and is registering its freehold ownership. The eastern section of the Millennium Green remains in the freehold ownership of MGT, which has no financial resources to improve or maintain it. MGT has asked the Council to step in to mow the grass, keep the area tidy and to generally maintain it, because it cannot do so.
- 6.6 Because Swan's approved scheme designs now keep the existing boundaries of the whole green intact it is not necessary for the Council to acquire any plots for construction purposes. The Council can use its compulsory powers through the existing CPO up to December 2018 to acquire plots 60, 62 and 70 in the eastern section for landscaping and to improve their management. In total this means the Council either has acquired - or is authorised to compulsorily acquire - around 72% of the current Millennium Green area using the powers it has obtained which are still relevant in the context of the existing scheme.
- 6.7 However plots 61, 71 and 74 in the eastern section, which were originally to have been built on, must now be acquired either voluntarily or compulsorily for purposes which are different to those which are authorised by the existing CPO, namely the purposes of bringing the plots within the overall landscaping scheme for the remainder of the new park, and improving their on-going management. This means that in the event that ongoing negotiations with the Trustees of the Robin Hood Millennium Green Trust are unsuccessful, the Council must make a fresh CPO, pursuant to its power under 226(1)(a) of the Town and Country Planning Act 1990 as amended, the Council being satisfied that the proposed acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the Order Land. The Order Land equates to around 28% of the proposed new central park, so its acquisition is important if the Council is to enable comprehensive improvements to the central open space as a whole, to create the new park and implement its intended ownership and management structure to make it a success for the whole community.

6.8 Current Management of the Millennium Green

- 6.8.1 Given that the green is located in a central urban area with high levels of deprivation, the arrangements under which MGT was established as an essentially voluntary entity did not provide for adequate resources or secure income. Whilst its occasional community events and voluntary activities are acknowledged and appreciated, MGT accepts that it is simply not able to maintain the land it owns. The Trust is now largely moribund and although a number of Trustees remain technically registered, only a single Trustee remains involved in any practical way.
- 6.8.2 It is officers' understanding that historically there has not been much engagement and consultation by the trustees with local residents over the use, maintenance, layout and management of the open space. This is understandable as the Trust has not had, or actively sought the resources required, apart from at its inception, to make significant changes, or even to maintain the existing green as it is. Until the pre-CPO discussions flagged the Trust's limitations to maintain the land the trustees had not formally approached the Council to discuss options for the maintenance and management of this area.
- 6.8.3 Due to its limited resources, there has been little by way of active maintenance of the Millennium Green by the MGT. The Council is aware that there has been occasional tree pruning by Trees for London, evidently commissioned by the Millennium Green Trust. There has also been periodic volunteer activity to help keep the area usable. But apart from that, the Trust has not been able to adhere to the covenants to ensure that the green is suitably managed and maintained for public use.
- 6.8.4 Given that the Council owns the surrounding buildings and areas of housing amenity land, it has had to take on a role of basic maintenance such as cutting the grass. During periods when the Council has stopped doing it the area has become overgrown and unkempt. In 2011 the Council sought to recoup its costs by invoicing the MGT, but this was not remunerated so the Council stopped grass cutting. However, following concerns of neglect, Tower Hamlets Homes was forced to resume and continues to cut the grass so the area does not become unkempt.
- 6.8.5 In making its 2013 CPO the Council acknowledged that the MGT trustees will have done their best, but that over time interest had waned and lack of resourcing in terms of staff and finances prevented the Trust from carrying out its duties as freeholder of this space for the benefit of the community. This situation remains unchanged.
- 6.8.6 The Council explained when it made the now confirmed 2013 CPO that the MGT is no longer a viable body to:

- fund necessary day-to-day management and maintenance of the entire park;
- act if there are squatters on the park; or
- carry out any capital investment in the park

6.8.7 The new central park will provide an amenity for a much larger local community at Blackwall. The space will have to 'work much harder' and will require much more intensive management and maintenance than it does now. The required new ownership structure and resourcing arrangements set out in this report are necessary in the context of the overall regeneration to ensure there is/are:

- clear roles and responsibilities with respect to the park area;
- secure and sustainable funding of maintenance and management;
- suitable authority to deal with squatters and any anti-social behaviour in or around the park area; and
- an adequate decision-making process to allow capital investment in the park area in the future (ie long after the planned improvements which Swan will carry out within the scheme).

6.9 Negotiations with Robin Hood Millennium Green Trust.

- 6.9.1 The Council has confirmed to Trustees throughout its discussions going back over several years that in delivering the regeneration with its partners it will seek to meet the requirements that Natural England have set down, which reflected those of the Trustees, i.e. that the existing central open space be improved and preserved in perpetuity; that the Millennium Green name be retained, and that some form of transitional membership be given to an existing Millennium Green Trustee on the board of the new Blackwall Trust.
- 6.9.2 It is hoped that Council officers can reach agreement with the MGT to acquire these land interests voluntarily. The MGT did not object to the 2013 CPO and after extensive discussions between the Council, Trustees and Natural England, the latter withdrew its objection to the Council's CPO when the Council provided an undertaking to preserve the central green by acquiring and retaining the freehold and setting up the new Blackwall Trust to be custodian of the green – the undertaking is summarised in para.9.6.1 - 9.6.2. Natural England was satisfied that the Council's proposals for the new Trust and new management arrangements would deliver an assured future for this important open space.
- 6.9.3 Officers from the Council and Swan have continued to meet with the sole participating lead MGT Trustee and have kept the other registered but non-participating Trustees collectively apprised of all meetings and discussions. The Council has explained its position to the Trust and has urged that a settlement be reached for the Trust to hand over its remaining land holdings voluntarily, recognising that the Trustees will need help and advice to fulfil this, for which the Council will pay.

- 6.9.4 The lead Trustee with whom officers are negotiating understands the Council's need to acquire this land and has indicated a willingness to agree the disposal of these plots to the Council, so they can be retained and renewed as open space. However to make such a voluntary disposal the approval of all registered Trustees is required and this may not be achievable.
- 6.9.5 The recommendations in this report will enable the Council to fulfil its obligations with regard to the set-up of the new Trust and to take the necessary steps to ensure both the comprehensive renewal of the green and its preservation as open space for future generations.
- 6.9.6 This report explains why the proposed CPO is needed to support the wider regeneration at Blackwall Reach. In partnership with Swan, the Council is committed to the establishment of a properly funded Trust and to put in place sustainable management and maintenance arrangements for the new park and the entire public realm across the new estate.
- 6.9.7 If the proposal for the necessary CPO is agreed, officers will continue and accelerate attempts to formally negotiate with Trustees, offering whatever appropriate support is required, including legal and financial assistance, to help achieve this land disposal if at all possible by avoiding the use of compulsory acquisition powers.
- 6.9.8 However the proposed CPO is essential as a precaution because the nature of the present ownership arrangements means that a collective decision by all Trustees is required to agree a voluntary disposal. It is important to commence the CPO processes for the non-acquired land interests within the red-line boundary shown in **Appendix 1**.
- 6.9.9 In accordance with statutory guidance, the Council needs to demonstrate that compulsory purchase is used as a measure of the last resort and that all reasonable efforts to acquire by agreement have been exhausted. The Council has been and will continue to be vigorously seeking a voluntary negotiated settlement with those whose interests will be acquired.

7 COMPULSORY PURCHASE OF PLOTS 61, 71, 74 OF THE MILLENNIUM GREEN

- 7.1 Using compulsory purchase powers will facilitate the delivery of this regeneration project as described above. The 2015 "Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion" (the Statutory Guidance) sets out statutory guidance to acquiring authorities in England making CPOs.
- 7.2 The Statutory Guidance states that "Compulsory purchase powers are an important tool for local authorities and other public bodies to use as a means of

assembling the land needed to help deliver social and economic change. Used properly, they can contribute toward effective and efficient urban and rural regeneration, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life.”

7.3 The Statutory Guidance provides that “Compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects.”

7.4 The Statutory Guidance also provides that “if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to: plan a compulsory purchase timetable as a contingency measure; and initiate formal procedures. This will also help to make the seriousness of the authority’s intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.”

7.5 The Statutory Guidance refers to the balance that has to be struck between ensuring a compelling case in the public interest and that the regeneration project sufficiently justifies interfering with the human rights of those with an interest in the land affected. It reads as follows:

“When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected”.”

7.6 The Statutory Guidance states –

“If an acquiring authority does not: have a clear idea of how it intends to use the land which it is proposing to acquire; and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making.”

7.7 Consideration is given to the human rights implications of the decision to make a CPO in section 12 below.

8 WHEN COMPULSORY PURCHASE IS TO BE USED

8.1 The circumstances in which CPO may be used by relevant authorities is summarised as follows:

- To unlock situations where a scheme is being blocked by an owner (or owners) unwilling to dispose of property.

- To ensure effective negotiations for land assembly where there is a multiplicity of ownerships and absent landlords
- Where there are unknown owners

8.2 The use of CPO in the case of the Millennium Green accords with the first of these circumstances.

8.3 People affected by the CPO have rights to object, to be heard at a public inquiry and receive compensation. The acquisition of land designed to facilitate a development that will promote the economic, social or environmental well-being of an area is an acceptable use of compulsory purchase powers under the legislation.

9. **THE NEW “BLACKWALL TRUST”**

9.1 The Council has been committed since the start of the Blackwall Reach project to preserving and improving the central green space (Millennium Green). This is to be done by Swan as part of the regeneration scheme, after the Council has acquired the freehold of the open space from the existing MGT, which is partially achieved.

9.2 The Council also wanted to find a way to broaden the regeneration benefits to the wider community, beyond the bricks and mortar and other non-physical provisions secured through the development and planning agreements.

9.3 To this end it obtained from Swan a commitment to join a new charitable company that will safeguard and oversee the new park and crucially to provide funding of £1 Million, plus a contribution from the ground rents of the private homes for sale, for the Trust to use to fund future works to the park and worthwhile projects for the benefit of local residents, long into the future. The grant from Swan is to be paid in four stages, upon completion of each successive scheme phase. The first payment of £250,000 has now been received and can be drawn upon by the new Trust once it is established. The next payment will come when Phase 2 is complete in c.2020.

9.4 The key issues to be addressed in setting up the new Blackwall Trust are:

- Freehold ownership by the Council and preservation of the new central park for the future enjoyment of local people, in compliance with the Council's commitments and undertakings.
- Management and maintenance of the new central park when the improvement works are completed.
- Creation of a charitable company limited by guarantee to oversee this new park.
- Enabling of the company to utilise resources comprising Swan's contribution plus income generated from its own fund-raising; this will fund beneficial projects for the community as soon as the Trust is established and any capital improvement works to the park in the longer term.

9.5 Undertakings by the Council

9.5.1 The Council is required to establish the new “Blackwall Trust” under the Principal Development Agreement, and has also given undertakings in an agreement with Natural England that it will fulfil a number of obligations in relation to its acquisition of the existing Millennium Green, for which Natural England provided initial funding in 1999. The obligations of the Council are broadly to:

- retain the freehold of land it acquires from the existing Robin Hood Millennium Green Trust (MGT);
- establish the Blackwall Trust as defined in the PDA, with a constitution broadly in line with that agreed with Natural England (ie covering Principles of Land Ownership, Draft Heads of Terms and a Deed of Covenant): the indicative principles of operation are set out in the paragraphs below;
- grant a lease of 250 years to the new Blackwall Trust for the central green, for which it will become custodian;
- ensure the preservation of the central green as an open space for the use and benefit of the whole Blackwall Reach community;
- retain the name “Millennium Green” for this open space;
- set up management arrangements by entering into a contract with Swan to manage and maintain the new park.

9.5.2 It is thus envisaged that the Council will retain the freehold and that the new Blackwall Trust will hold a long lease of the central open space at Blackwall Reach - which will retain the “Millennium Green” name - for the use and enjoyment of the local residential community. This space is to be used as an area for informal recreation and a place for community events which are consistent with the Trust’s objects. The Trust as leaseholder of the park would be its custodian and have an overview of its management, in liaison with the Council as freeholder and Swan as the Council’s partner with a contractual responsibility to maintain it.

9.5.3 These arrangements will provide a twofold assurance that:

(a) the renewed green (the park) will remain as open space for generations to come and will be properly funded in terms of its day-to-day management through the direct arrangement between the Council and Swan, and

(b) that the Blackwall Trust will have funds immediately to support socially beneficial projects and in the longer term for further improvement works if these are desired.

9.6 Ownership of the New Park

- 9.6.1 The Council will own the **freehold** of the new park area with covenants in place to ensure that it remains fully accessible to the public (see below). This requires the Council to complete its acquisition of the existing land interest held by MGT. Agreeing to make a CPO will assist in this.
- 9.6.2 The new Blackwall Reach Trust, once established, would be granted a **long lease of 250 years** on the park area. The new central park area would continue to be referred to as a Millennium Green.

9.7 Covenants to Guarantee the Open Space

- 9.7.1 There would be a covenant in the Council's freehold title (and the Trust's leasehold title) requiring that the park area be permanently and fully accessible for the use and benefit of the general public and the residents of Blackwall Reach and surrounding area, thus guaranteeing its continuation as open space.

9.8 Transition from Existing Arrangements

- 9.8.1 Under the original transfer documents that established the Millennium Green there are covenants requiring the MGT "to maintain and manage [the Green] in good order suitable for use as a park or open space" and "to use [the Green] as a park or open space open for the use of the general public". The proposed structure and delegation of roles and responsibilities to the new Blackwall Trust is designed to deliver these objectives.
- 9.8.2 At present THH is maintaining the western half of the green as this has been vested to the Council. There will be a change to the management of the green whilst Swan takes temporary possession under license firstly of the western half, to carry out the improvement works within its Phase 2 programme, and secondly of the eastern half, once this is fully acquired for renewal in Phase 3. During the period that Swan is licensee it will assume responsibility for maintaining the open space until works are complete, at which point the improved green will be transferred to the new Trust as set out above.
- 9.8.3 The Blackwall Trust, apart from its leasehold / overview of the new central park, would have a different function from the existing MGT. It would primarily be a charitable company set up to deliver participation by all stakeholders in the regeneration; it would hold substantial funds, arrange activities and help fund and run initiatives for the benefit of the expanding local community at Blackwall Reach and the surrounding area. It is envisaged such activities and initiatives should be focused around education, training, personal development and improved well-being, and enhancing community cohesion.

- 9.8.4 The Trust would be representative of those with interests at Blackwall Reach, including the resident community (tenants and leaseholders), the estate management (Swan), the Council and Woolmore School.
- 9.8.5 The structure of the Trust would have mechanisms in place to ensure good governance and that the activities of the Trust are fully transparent to the residents at Blackwall Reach and for stakeholders to have an input into the programme of initiatives funded by the Trust.
- 9.8.6 The Trust would have the ability to propose additional capital investment in the park. A mechanism would be required for coming to agreement on any such proposals with the Council and with Swan, in particular dealing with circumstances where any such investment may lead to additional management/maintenance burdens. The Trust would also have the ability to organise activities and events in the park

9.9 Management Responsibilities

- 9.9.1 The Council as freeholder will be responsible for procuring the ongoing management and maintenance of the park. Under the envisaged arrangements the Council will enter into a management contract with Swan Housing Association to manage and maintain the park to an agreed standard at nil cost.
- 9.9.2 Definition of the 'standard' to which the park must be maintained could be reviewed from time-to-time with the Council and the leaseholder (the Trust). This would fulfil the Trust's remit to overview the new park and ensure it is being run satisfactorily.
- 9.9.3 Under the management contract, the Council as freeholder would give authority to Swan to deal with any squatters on the park and to act in the case of anti-social behaviour, etc.

9.10 Funding for Blackwall Trust

- 9.10.1 As explained above, the Trust would be funded by a combination of:
- £1 Million capital provided from Swan on a phased basis during the development of Blackwall Reach: the first £250,000 has now been paid to the Council in readiness for the Trust to be set up;
 - ground rents from across Swan's Blackwall Reach estate (estimated to be around £80,000 per year at scheme completion);
 - interest generated from the capital held;
 - fund raising (in capacity as a charity) and applications for grants.

9.11 Establishing the Trust - Operational Area

- 9.11.1 Like the ownership structure, the objects of the Trust are to be finally determined but indicatively would support local initiatives and activities for the benefit of the local residential community at and around the new Blackwall Reach development. Such activities and initiatives should generally be focused around education, training, personal development and improved well-being and enhancing community cohesion.
- 9.11.2 It is envisaged that the operational area of Blackwall Trust should be contiguous with the Blackwall Reach regeneration area, as bounded by the major elements of infrastructure. The intention is that activities and initiatives of the Trust should be primarily focused on Blackwall Reach itself. For example a service could be funded to operate out of the new community facilities at Blackwall Reach (i.e. should be based at Blackwall Reach), or be based externally but be funded to provide services within the Blackwall Reach area. An example is a youth group, which could be based at the local community centre but might also have membership from a wider area.

9.12 Objectives of the Trust

- 9.12.1 As the Blackwall Trust will ensure the green:

- makes a substantial contribution to the life of the whole community
- is enjoyed by people of all ages and physical abilities
- is open to visitors to the locality as well as inhabitants
- is an attractive place for people to take air and exercise, meet others and pursue leisure activities and pastimes consistent with shared enjoyment of the whole of the land
- is used for community events and celebrations
- makes a positive contribution to the local environment

- 9.12.2 In terms of its control of substantial resources Blackwall Trust's wider social objectives should include the:

- advancement of education
- relief of financial or other hardship in the community
- creation of training and employment opportunities
- maintenance, improvement or provision of public amenities
- assistance in or direct provision of recreational facilities for the public
- protection or conservation of the environment
- promotion of public health
- promotion of public safety and prevention of crime
- provision of recreational facilities and activities for residents including specific groups including young people, women, disabled and elderly residents

9.13 Powers of the Trust

9.13.1 It is envisaged these will be wide, to include power to:

- raise funds (but not borrow nor raise a mortgage)
- accept donations
- apply for grants
- secure services local initiatives/activities for the benefit of the community
- fund capital investment in the park (and public realm around Blackwall)
- provide grants for local initiatives/activities for the benefit of the community

9.14 Limitations

9.14.1 The Trust will not:

- fund any political activities
- support any specific religious activities
- fund anything which is not legal or could be deemed immoral or contrary to public policy
- act in any way which is in breach of statute or any by-laws
- carry out any profit making business activity (i.e. grants may be given to local businesses, but not loans nor taking shares in companies)
- provide direct financial assistance for specific individual gain
- erect any permanent building on the Millennium Green which is dedicated for use by one particular group in such a way as to exclude other inhabitants or visitors

9.15 Financial Limitations

9.15.1 The following issues need to be further refined and agreed, in consultation with Swan, Natural England and other stakeholders, under the proposed delegated authority:

- consideration of a limitation on the Trust's capital expenditure in the early years (or perhaps an annual limit): this might for example limit the Trust to spending interest accrued and funds raised, but not the capital lump sum payment from Swan.
- consideration of a defined limit to what the Trust can spend of its monies in any one year on administration and management, though it will incur running costs and require specialist advice (and perhaps ongoing support from the Council and Swan).

9.16 Structuring Options for the Trust

- 9.16.1 Specialist legal advice has been obtained and considered. The suggested mechanism is for a **Charitable Company limited by guarantee (CLG)**. This is set up with charitable articles, and is registered both at Companies House (as a company) and with the Charity Commission as a charity in its own right.
- 9.16.2 As a CLG is an incorporated body, it can own property, will be liable for its own debts, and can transact business with third parties without the need for the trustees to do so in their personal capacity.
- 9.16.3 A CLG has a two-tiered governance structure consisting of a board of directors with day-to-day control (the “charity trustees”), and one or more Members (who are analogous to the shareholders in a company limited by shares). Often, in a CLG, the members and directors will be one and the same persons.
- 9.16.4 As a limited company, the charity will have directors and members; the directors will also be trustees of the charity for the purposes of the Charities Act 2011. The CLG will be limited by guarantee and will have its liability limited to such amount as the members undertake to contribute to the assets of the company in the event of its being wound up. The CLG will be liable for its debts and the people behind it are fully protected by limited liability.
- 9.16.5 The charity trustees assume fiduciary duties as charity trustees as well as Companies Act duties as directors of the company.
- 9.16.6 The Members will give a nominal guarantee (normally £1 or £10) to cover the company’s liability, e.g. on liquidation. Their liability is limited to this nominal amount.
- 9.16.7 Members have certain rights in respect of particular issues, but the day-to-day decision making and responsibility sits with the board of charity trustees. For instance, only the members can authorise amendments to the Articles of Association and the name of the company. The members also have the right to see copies of the company’s official records (accounts, etc), and to remove charity trustees.
- 9.16.8 The charity trustees meanwhile, in the absence of a separate executive team, are responsible for day-to-day running of the CLG.
- 9.16.9 A CLG has its own legal personality and can enter into contracts, transact with third parties and own property in its own right. Charity trustees will not have personal liability for the CLG’s business, except in limited circumstances (e.g. fraud/dishonesty).

- 9.16.10 A CLG will have to make returns and submit accounts on an annual basis to both Companies House and the Charity Commission, and must also comply with both charity and company law.
- 9.16.11 The benefit of establishing the Blackwall Trust up as a charity is that because of its charitable status, the Company will operate as a public trust and be able to claim certain tax reliefs. A CLG will however face a higher level of regulation and is not as quick to set-up as, for example a Community Interest Company.
- 9.16.12 The alternative structure considered was that of a “Trust”, which is managed and controlled by a group of trustees or a corporate trustee. A Trust, in the legal sense, does not have its own legal personality and so cannot enter into contracts, own property or employ staff in its own right. Trustees are liable personally to the extent that they cannot rely on their trustees’ right of reimbursement from the charity’s funds or the right to be relieved from liability by the Charity Commission. Whilst the administration of a Trust structure is simple when compared to the CLG model, given the objects of the charity and the need for the charity to hold a lease of the Millennium Green, this may not be a viable option.
- 9.16.13 It is therefore considered that the CLG model is most appropriate to the role, objects and composition of the proposed Blackwall Trust.

9.17 Appointment of Directors (and “Charity Trustees”)

- 9.17.1 It is recommended that this is reviewed with the partners, particularly Swan as main funder of the Trust, and considered under the requested delegated authority. The Undertaking to Natural England permits negotiation on key provisions and officers are likely to propose that the Board of Directors/Trustees should comprise 10 trustees as follows:
- 2 x resident representatives
 - 1 x nominee from existing MGT (to provide transitional continuity) - to convert once the first term has expired to:
 - 1 x nominee from Swan’s Estate Residents Board
 - Up to 2 x nominees from London Borough of Tower Hamlets
 - Up to 2 x nominees from Swan
 - 1 x nominee from the Woolmore Primary School (Board of Governors)
 - 2 x independents with specific skills as desired by the Board of Trustees (being people who live or work in the Borough) (e.g. an accountant to act as treasurer)
- 9.17.2 Trustees should normally be appointed for a term of 3 years, which can be renewed periodically. It may be preferable for the LBTH and Swan nominees to be permanent appointments, from which they will stand down when their employment ends with LBTH or Swan (as the case may be). Trustees should not be able to vote on matters in which they have a conflicting interest, for example regarding funding for services

provided by an organization they control or work for, or if they have a connection with a potential recipient of a grant from the Trust.

9.17.3 Selection of new trustees will be done by advertisement, application and interview by the Board.

9.17.4 For specific consideration will be the balance of Trustees. Once set up the Trust will be an independent charitable organization with a requirement to act in compliance with its terms of reference and regulations, but it will be holding substantial resources contributed primarily by Swan. It may be considered appropriate to seek a further independent nominee to ensure that the Trust has robust advice as it pursues its remit

9.17.5 The Corporate Director, Place, shall nominate which officers of the Council are to be the directors/trustees of the CLG.

9.18 Administration

9.18.1 The Trust may decide to have an administrator employed on a part/full-time basis, as required. Mechanisms will be required for selection of administrator and as indicated above the costs for this may be limited.

9.19 Eligibility for Trusteeship/Directorship

9.19.1 There should be clear terms of reference and appropriate checks to ensure that Trustees/Directors are responsible people. All trustees are required to be fit and proper persons in accordance with HMRC rules.

9.20 Mechanisms

9.20.1 Mechanisms are to be set out for meetings, selection of Chair, special meetings, quora, voting, minutes, accounts and publishing minutes.

9.20.2 There must be one annual general meeting which may be attended by all residents at Blackwall Reach, which must be suitably advertised in advance and held in a convenient location which can accommodate attending residents.

9.20.3 Minutes and proceedings of the AGM must be made available to all residents at Blackwall Reach.

10 COMMENTS OF THE CHIEF FINANCE OFFICER

10.1 This report outlines the progress on the Blackwall Reach Regeneration scheme and seeks the approval of the Mayor in Cabinet to establish a new charitable company - the Blackwall Trust - to oversee the new central park area and to authorise the making of a Compulsory Purchase Order to acquire the open space from its current owners - the Robin Hood Millennium Green Trust.

- 10.2 Funding for the Blackwall Reach scheme was initially approved by Cabinet in July 2009, with the project expenditure mainly relating to the costs of land assembly and decants. The significant increase in property values over recent years necessitated an increase in the capital estimate for the project to £20.266 million which was approved by the Mayor in Cabinet on 26th July 2016. The increase in property values has given rise to a corresponding increase in the overage receipts that are likely to be generated by the project and which are cross-subsidising the scheme.
- 10.3 A key element within the site boundaries is the Millennium Green. This open green space is currently managed by the Robin Hood Millennium Green Trust following transfer of the land from the Council in June 2001, however negotiations are taking place to assign the land and the associated responsibilities to a new trust – the Blackwall Trust. This report seeks approval for Compulsory Purchase Order proceedings to be implemented should efforts to acquire the land by agreement fail. It should be noted that the CPO process is a last resort, and that negotiations with the existing Trust will continue, however arranging for these back-up procedures to be put in place now will reduce any subsequent delays in the regeneration programme that will arise if agreement cannot be reached. As open land held for charitable purposes, there are no capital acquisition costs associated with the CPO, however the Council will reimburse any reasonable costs that the existing Trust incurs as part of the transfer process.
- 10.4 The Council is committed to establishing the new Blackwall Trust in accordance with the terms of the Principal Development Agreement that was entered into with its partners - the Greater London Authority (GLA) and Swan Housing Association. It has also given an undertaking to Natural England that the Trust will be established, with the Council being at risk of having to repay a £38,000 Natural England grant if it is not set up by May 2019. The Trust will initially be established with £1 million of capital provided by Swan as part of the Blackwall Reach planning agreements, the first £250,000 of which has been received by the Council in line with the milestones within the agreements. This report seeks authority to transfer these and future funds to the Trust.
- 10.5 Once fully acquired, the lease of the open space will be transferred to the Blackwall Trust which in conjunction with Swan will undertake the on-going management and maintenance of the park. In addition to the initial funding of £1 million, the Trust will receive annual income estimated at £80,000 from the ground rents that Swan collects from across the Blackwall Reach estate. It will also seek to raise funds from other sources as set out in paragraph 9.10.
- 10.6 Although the Council currently has no responsibility for the open space, as outlined in paragraph 6.5 it has been undertaking limited maintenance of the site, including cutting the grass, because the Millennium Green Trust has no financial resources to maintain the area itself. These costs will be avoided in future if the responsibility is transferred to the Blackwall Reach Trust.

11 LEGAL COMMENTS

Millennium Green CPO

- 11.1 The Council is empowered under section 226(1)(a) of the Town and Country Planning Act 1990 ("TCPA 1990") as amended, to acquire any land in its area if it is satisfied that the proposed acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. Alternatively, if the land is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area, the Council may rely on section 226(1)(b) TCPA 1990.
- 11.2 In order to make an acquisition under section 226(1)(a) TCPA 1990, section 226(1A) provides that the Council must also consider that the development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental well-being of its area.
- 11.3 The London Borough of Tower Hamlets (Blackwall Reach) CPO 2013 was confirmed in 2015 which enabled the Council to acquire the entire Millennium Green. Certain plots of the Green, mostly to the west, were to be acquired for the purposes of securing its management. A large portion of this land has now been vested by the Council pursuant to a General Vesting Declaration made in May 2017. Other plots of the Green, to the east, were to be acquired to be built upon and this would in turn require the Council to provide alternative open space in exchange. However, Swan Housing Association Limited, the developer, no longer requires these plots of land for the purpose under which the CPO permitted acquisition. Accordingly, the western part of the Green is now in the Council's ownership and the eastern part remains in the ownership of the Millennium Green Trust. For the reasons set out in the report (which reflect the reasons for which the Secretary of State confirmed the CPO in 2015 in respect to the western part of the Green), the Council considers it necessary to acquire those remaining 3 plots to the east identified in the plan at Appendix 1 (the "Order Land"). For the reasons set out in the report, the redevelopment of the Order Land will result in a significant improvement to the economic, social and environmental well-being of the area. Acquisition will both facilitate the carrying out of the wider Blackwall Reach redevelopment project and improve the quality and management of the open space to be acquired.
- 11.4 Section 19 of the Acquisition of Land Act 1981 (ALA 1981) requires that where a CPO includes public open space it must be subject to Special Parliamentary Procedure unless a certificate is obtained from the Secretary of State. "Open space" is defined in section 336 TCPA 1990 as "...any land laid out as a public garden, or used for the purposes of public recreation...", which applies to the existing Green.
- 11.5 Under section 19(1)(aa), the Secretary of State may grant a certificate where the acquisition is necessary to secure the preservation or improve the management of the land. When confirming the existing CPO, the Secretary of State issued a certificate on these grounds in relation to plots 59, 60, 62 and 70. The reasons for that decision are essentially the same as the reasons why

the Council now needs to acquire plots 61, 71 and 74: the Council wish to take control of the Order Land, both to enable it to be re-laid as improved public space and to secure its management going forwards. Accordingly, a certificate under section 19(1)(aa) ALA 1981 will be sought from the Secretary of State to authorise the acquisition of the Order Land through the CPO. The application is made at the time that the CPO is submitted to the National Planning Casework Unit for confirmation.

- 11.6 If the Order Land is acquired (voluntarily through negotiations with the Millennium Green Trust or compulsorily) the freehold of the entire Green would then be in the Council's ownership. In turn, the Council intends to grant a 250 year lease for a premium of £1 to the new Blackwall Trust in order that the land can continue to be used as open space and for the Trust to oversee the Green and, through various funding streams, to fund works to the Green and carry out various activities and initiatives for the benefit of local residents.
- 11.7 Section 10 of the Open Spaces Act 1906 provides that a local authority that has acquired control over any open space to which the 1906 Act applies shall, subject to certain conditions, hold and administer the open space in trust to allow the enjoyment of it by the public as an open space and for no other purpose. When granting the lease, the Council must ensure, therefore, that there is adequate protection so that the Green will continue to be available as public open space.
- 11.8 Section 123 of the Local Government Act 1972 enables the Council to dispose of its land in any manner that it may wish. However, except in the case of a short tenancy (i.e. leases of less than 7 years), the consideration for such disposal must be the best that can reasonably be obtained. Otherwise the Council requires consent of the Secretary of State for the disposal. Scope exists for the Council to dispose of such land at less than best consideration and without the specific consent of the Secretary of State if it can bring itself within the provisions of the General Disposal Consent (England) 2003. The Consent provides that the Council can dispose of the land if it considers it will help to secure the promotion or improvement of the economic, social or environmental well-being of its area, and the undervalue is at less than £2m. In this regard, proper advice must be obtained in respect to the value in accordance with the Consent.
- 11.9 As the Green is open space, 123(2A) of the Local Government Act 1972 requires that any intended disposal, which includes the grant of a lease of a term of seven years or longer, must be advertised for two consecutive weeks in a local newspaper. Any objections to the disposal must be taken into account before the disposal is effected
- 11.10 The ALA 1981 provides that the authorisation of a compulsory purchase is to be conferred by an order, called a compulsory purchase order ("CPO"). A CPO is required to be made in a prescribed form and must describe by reference to a map the Order Land. Where the Council makes a CPO, it must submit it to the Secretary of State for confirmation. Prior to submission, the Council must publish notice of the making, such notice containing prescribed information. The

Council must also serve a notice in prescribed form on affected owners, tenants or occupiers of the land allowing them the opportunity to object. The procedure for confirmation of the CPO is specified in the ALA 1981 and it may require the conduct of a public inquiry if there are objections.

- 11.11 As the Council may ultimately be compulsorily acquiring the Order Land, it should take care that it does not contravene the rights of individuals under the European Convention on Human Rights ("ECHR"). Section 6 of the Human Rights Act 1998 makes it unlawful for the Council to act in any way which is incompatible with a right under the ECHR. Pursuant to Article 1 of the First Protocol to the ECHR, every person is entitled to the peaceful enjoyment of his or her possessions and no one shall be deprived of those possessions except in the public interests and subject to the conditions provided for by law and by the general principles of international law.
- 11.12 In order to avoid contravening individual human rights by making a CPO, it must be demonstrated that the CPO is in the public interest and that it is necessary and proportionate to make the CPO. It is considered that, as the requirements of section 226(1)(a) and 226(1A) TCPA 1990 have been fulfilled (i.e. the development, redevelopment or improvement will contribute to the promotion or improvement of the economic, social or environmental well-being of the area), this will provide a very substantial basis upon which to make the case that the CPO is policy based, is consistent with statutory objectives, and is necessary and proportionate.
- 11.13 The making of a CPO should be a last resort and should be preceded by vigorous attempts to acquire the land by agreement. There should be evidence of intransigence on the part of owners such that the purpose for which the CPO is sought is put at risk. It must be clear that the reason for the CPO offers public benefits, such as improved amenities for the area. The balance of interests between the protection of individual rights and the public benefits to be obtained must be considered and there should be a compelling case in the public interest for the CPO. In this regard, it is relevant that individuals whose rights may be affected have a right to object to the CPO, and to have their objections heard at a Public Inquiry.
- 11.14 Statutory guidance, "Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion", which was issued in 2015, provides guidance to acquiring authorities on the use of compulsory acquisition powers. The guidance has been referred to, as appropriate, in the preparation of this report.
- 11.15 Before making a CPO, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't. An equalities analysis has been conducted, the outcome of which is that it does not appear that the CPO will have any adverse effects on people who share Protected Characteristics.

- 11.16 The Council is a best value authority within the meaning of section 3 of the Local Government Act 1999 and is obliged to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficient and effectiveness”. This is expanded upon at paragraph 14 of the report and officers must continually keep under consideration whether the CPO process is discharging the best value duty.

BLACKWALL TRUST

- 11.17 The Council is required, under the Principal Development Agreement dated 19 April 2011 (as varied on 10 December 2013), to establish the Blackwall Trust, which is to be a charitable company limited by guarantee (the “Trust”).
- 11.18 The purpose of the Trust is, inter alia, to own and hold the leasehold interest in the Millennium Green as open space, to arrange activities and to run initiatives for the benefit of the local community. These activities and initiatives will be focussed around education, training, personal development, improved well-being and enhancing community cohesion.
- 11.19 As distinct from a ‘local authority company’, the Council is not taking an interest in the Trust and so it can rely on its general powers for its establishment. The powers in relation to the establishment of a non-local authority company, therefore, can fall under section 1 of the Localism Act 2011, which is the Council’s power to “do anything that individuals generally may do”. The entering into agreements, agreeing governance documents, incurring expenditure, and submitting documents to Companies House and the Charity Commission, or anything else which is incidental to establishing the Trust can be carried out under section 111 of the Local Government Act 1972, which is the power to do anything “...which is calculated to facilitate, or is conducive or incidental to, the discharge of any [function].”
- 11.20 A company limited by guarantee is the usual legal structure for creating a new charitable company. The key features include of the company include:
- it is incorporated under the Companies Act 2006 without issuing shares but instead requiring its members to guarantee a sum of money in the event of insolvency;
 - it gives limited liability rights;
 - the directors have duties and responsibilities under the Companies Acts and additional duties because of it being a registered charity;
 - it is regulated by Companies House, and subject to the Charity Commission’s regulation.
- 11.21 Given the purpose for which the Trust is being established, a company limited by guarantee is the most appropriate model; the structure is well known in the private sector, which makes external funding and partnerships much more likely. However, as there are requirements for administration, annual reports and meetings, and audited accounts, this can make it more expensive and administratively burdensome than others. The various funding streams for the

Trust, which include the receipt of ground rents, fund raising and a capital receipt from Swan Housing Association Limited, will be sufficient for this purpose.

- 11.22 Swan Housing Association Limited is required under the PDA to release to the Trust, in four tranches, a total of £1m to use in furtherance of its objects. The first sum of £250,000 has been received by the Council and is being held on trust, pending the establishment of the Trust. Once the Trust is established, these funds are to be released.
- 11.23 On establishment of the Trust, the Council's involvement in it will cease, save for in respect to nominated officer(s) being appointed as directors/members.
- 11.24 It is proposed to appoint up to two Council officers as directors and trustees of the Blackwall Trust. Whether one or two officers are to be appointed will depend on the final governance structure, as there are certain restrictions on local authority board membership. In accordance with section 167 of the Companies Act 2006, all director appointments must be notified to Companies House and there are similar provisions relating to the appointment of Trustees under the Charities Act. Under para 2.2 of part 3 of the constitution (Responsibility for Functions), in relation to executive functions, the Mayor may appoint officers to external bodies where the position is unpaid.
- 11.25 An officer of a local authority, who is also a director of an external body, must be aware of their duties in respect to each role. Conflicts of interest may arise in a number of areas for an officer who is also a director of the company and the directors referred to at para 9.17.5 should be mindful of their responsibilities, including those under the Local Government Act 1972, the Local Government Act 2000, and the constitution.
- 11.26 When establishing the Trust, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't. An equalities analysis has been conducted, the outcome of which is that it does not appear that the creation of the Blackwall Trust will have any adverse effects on people who share Protected Characteristics.

12 HUMAN RIGHTS IMPLICATIONS OF THE CPO

- 12.1 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way that is incompatible with the European Convention on Human Rights. Various convention rights are likely to be relevant to the Order, including:
- **Entitlement to a fair and public hearing in the determination of a person's civil and political rights** (Convention Article 6). This includes property rights and can include opportunities to be heard in the consultation process.

- **Peaceful enjoyment of possessions** (First Protocol Article 1). This right includes the right to peaceful enjoyment of property and is subject to the state's right to enforce such laws, as it deems necessary to control the use of property in accordance with the general interest.
- **Right to respect for, private and family life**, in respect of which the likely health impacts of the proposals, will need to be taken into account in evaluating the scheme (Convention Article 8).

12.2 The European Court has recognised that "*regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole*". Both public and private interests are to be taken into account in the exercise of the Council's powers and duties as a local planning authority. Any interference with a Convention right must be necessary and proportionate.

12.3 The Council is therefore required to consider whether its actions would infringe the human rights of anyone affected by the making of the CPO. The Council must carefully consider the balance to be struck between individual rights and the wider public interest. In the present case, the CPO would amount to an interference with the property rights of the MGT. However, it is relevant that the use which the Trustees can make of the land is limited by their own obligations to hold and maintain the land for the benefit of inhabitants of the area; and that, if the CPO is confirmed, inhabitants would continue to be able to use the open space in circumstances where its long term maintenance and management was significantly improved. For the reasons set out above, it is considered that any interference with the Convention rights caused by the CPO will be justified in order to secure the social, physical and environmental regeneration that the project will bring.

13 ONE TOWER HAMLETS CONSIDERATIONS

13.1 The Council has a range of statutory duties to facilitate development in the borough and provide affordable homes for local residents. Regeneration and development is a key factor to ensuring economic prosperity for the individual and for the community. The council has to plan for the overall social infrastructure to meet the needs of the rising local population. Previous reports to Cabinet and the Mayor in Cabinet, and evidence to the CPO Public Inquiry in 2014 have confirmed that the Blackwall Reach regeneration scheme will contribute to One Tower Hamlets objectives. The three objectives are to reduce inequalities; ensure community cohesion; and, strengthen community leadership.

13.2 On **reducing inequalities**, the scheme in delivery will lead to a massive increase in genuinely affordable social housing on the site. The scheme will also lead to new socio-economic infrastructure for the area, i.e. new education, community and retail facilities that will improve community well-being for local residents.

- 13.3 On **ensuring community cohesion**, the Council has worked with community representatives to facilitate the regeneration project, and minimise disruption. The new scheme is intended to achieve transformational change and the high quality 'Place Making' objectives. The provision of new community facilities and services provided for all residents, plus increasing linkages with the local school, which is one of the hubs of the local community, are greatly increasing community cohesion.
- 13.4 On **strengthening community leadership**, the Council and Swan continue to work closely with residents. The successful redevelopment of Blackwall Reach and the Robin Hood Gardens Estate is predicated on continuing successful engagement with residents and other local stakeholders and the partners will continue to work with residents and stakeholders on that basis.

Equalities

- 13.5 The current proposal by the Council will require the MGT to transfer the remaining land back to the Council. The negative impact will be on the 6 trustees themselves – 2 registered within the same ward, 3 registered within the borough and 1 unknown as they moved away from the area a number of years ago. An Equalities Analysis has been carried out and is attached at Appendix 2. In theory the negative impact to MGT trustees would be the acquisition of their land interest, ie the Millennium Green. Provision is to be made for their transitional representation on the board of the proposed new Blackwall Trust, so they would retain a voice, although only one trustee is currently actively involved. Because the existing trustees are a very small group an equality profile in this detail would identify them individually. Overall the equalities impact will be positive for the wider Poplar community which is illustrated in Table 1 below.

Table 1: Number and proportion of residents by age range				
Residents by Age	0-15	16-64	65	Total
Poplar Ward	1,797	4,766	394	6,957
Poplar %	25.8%	68.5%	5.7%	100%
Tower Hamlets %	19.7%	74.1%	6.1%	100%

(Source: Census 2011 QS103EW - Age by single year)

The council and its partners as part of the estate regeneration are ensuring that the park is better maintained, managed, and resourced with the creation of a new 'Blackwall Trust'. The financial provisions for the new Trust will provide resources to be used for the wider benefit of the community than is presently the case.

- 13.6 The specific proposals in this report are intended to action the setting-up of the new Blackwall Trust, whose functions as broadly set out in paras 9.4 – 9.13 are to oversee a crucially important open space at the heart of the existing and new expanded community in the area. The objects and heads of terms for the new Trust will ensure that it focuses on addressing inequality in the area, through the availability of an attractive public open space for the enjoyment of all residents, and critically via the provision of funding for socially beneficial

activities and projects, with funding secured for years to come. The Blackwall Trust, as explained in this report, is to be operated by a board on which local residents and other stakeholders have a strong and decisive voice in allocating resources where they are needed, and in taking responsibility for generating improvements in the lives of other local people.

- 13.7 Throughout the process of developing the regeneration masterplan and then taking the scheme forward at Blackwall Reach, including exercising its CPO powers in 2013, the Council has had regard to the equalities implications for affected land interests and the wider community, including existing residents and stakeholders, and the future community who will arrive at Blackwall Reach as the scheme is developed. This is considered above under “One Tower Hamlets” considerations.
- 13.8 The action proposed by the Council to make a further CPO for three residual plots of the Millennium Green which will remain in the ownership of MGT unless the Council takes this action, or secures a disposal by voluntary agreement, is intended to enable comprehensive renewal of existing open space – including those plots which the Council has acquired or has CPO powers already to do so. The renewal of the park and the introduction of new management arrangements through the set-up of the new Blackwall Trust, will, as demonstrated, be for the benefit of residents of all tenures, without exclusion. The CPO requested will help to secure this much-valued open space and retain it as a viable and sustainable community resource for literally centuries to come.
- 13.9 It is recognised that the existing owners of the plots of open space that are to be compulsorily purchased do not have the resources to maintain or improve their land under the present ownership arrangements. It is acknowledged that as a voluntary trust they are not properly resourced.
- 13.10 The contribution of the MGT historically is valued and the Trustees will be invited to put forward a nominee for a transitional period (it is suggested for the first term) whilst the new Blackwall Trust takes shape and develops its wider role. The Council will continue to set out this proposal to MGT Trustees as it seeks to meet its contractual and other commitments and its undertaking to Natural England who helped to broker this approach with MGT and has supported it, in respect of the Council’s proposals for the new Trust and the relationship of the existing MGT to it.
- 13.11 MGT has welcomed the design changes that will retain the green in its present boundaries as a positive step and recognises that disposal of the land identified is necessary to help achieve the renewal and long term viability of the transformed open space, alongside guarantees of its preservation in perpetuity and the offer of transitional representation for continuity to an existing Trustee.
- 13.12 The steps proposed in this report are not considered to be prejudicial in their equalities impacts upon MGT Trustees because they will in fact achieve similar purposes to the MGT’s own objects, which it can no longer deliver without intervention by the Council. Rather the actions proposed are considered to be

for the benefit of the wider community and stakeholders, including those who may benefit as a result both of the open space being renewed, maintained and preserved into the future and/or from the wider social initiatives which the new Blackwall Trust can support via its sustainable funding mechanisms.

14 BEST VALUE (BV) IMPLICATIONS

- 14.1 The Blackwall Reach project as a whole aims to achieve best value in delivery through the pooling and best use of land assets between the Council and its partner, GLA, and other enabling investment, to enable comprehensive regeneration, within a financial model that will off-set costs as far as possible through substantial overage. The scheme will cost £430 million, set against a Council enabling contribution £20.266 Million (i.e. 4.7% of the overall cost, most of which is met by the developer). The main value of the project – and the council's enabling contribution - is the near 300% increase in affordable rented homes for local people in housing need, along with substantial environmental improvements and other community benefits.
- 14.2 The council's expenditure on the overall project is essential to deliver the overall scheme and its associated benefits. The Council has been predominantly successful in facilitating land assembly for Phases 1b, 2 and 3 of the scheme, and as a result the scheme will progress and substantial numbers of new homes are being built for local people.
- 14.3 Costs in relation to the measures proposed in this report will be met from the existing capital estimate, which was revised and approved by the Mayor in Cabinet in 2016.
- 14.4 The set-up of the Blackwall Trust requires the provision of specialist legal advice and some initial council officer time to facilitate its establishment. Thereafter the Trust predominantly funds itself and will operate initially through the provision of the first of 4 payments which the council has already received from Swan, of £250,000. The fledgling Trust will invest most of this to start generating interest and utilise an amount which it will determine to kick-off its independent fund-raising and other socially beneficial activities. The provisions for set-up also indicate there should be a limitation on the Trust's expenditure on itself: this can be determined by the Trust or under the delegated work to finalise the rules for its operations.
- 14.5 Potential costs which may arise in relation to the land assembly / CPO primarily include officer time in relation to:
- ongoing negotiations and legal or other relevant support for MGT to assist in the voluntary disposal, for which the council will pay reasonable costs in line with good practice
 - the cost of making the CPO (officer time, process compliance including relevant notices, external legal validation etc.)
 - land referencing
 - preparation and representation at any subsequent Public Inquiry, if the CPO is contested.

15 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 15.1 The action requested in this report will enable the council to meet its contractual commitments and undertakings to make the renewed green space a viable and sustainable community resource for generations to come, within its existing boundaries. The implications for the environment are positive and beneficial. The green will be safeguarded through the new ownership and management arrangements, along with new participatory structures to be put in place, and future funding and secured. The overall regeneration will have three key sustainability benefits.
- 15.2 Firstly, the housing stock being redeveloped was designed to an environmental performance consistent with standards for build in place at the time the properties were built (mainly circa. 1970). They are being replaced by homes and buildings built to a far higher standard of environmental performance, which will mean they are far more cost effective to run, thereby reducing the potential for fuel poverty amongst low income households that are expected to occupy the new affordable homes within the scheme, including those being rehoused from the properties to be replaced. All the new homes will meet a minimum standard (Code of Sustainable Homes Level 4) and there may be scope to deliver a higher standard later in the project. The scheme also seeks to facilitate better approaches to energy conservation and waste recycling.
- 15.3 Secondly, a key element of the sustainability agenda is using land in urban environments to maximum effect. This both maximises the value of the land in strategic planning terms, and reduces pressure to build on green-field sites.
- 15.4 Thirdly the proposals involve the development of a high quality environment that will encourage bio-diversity as well as providing recreation space and amenity.

16 RISK MANAGEMENT IMPLICATIONS

- 16.1 The measures proposed in this report will deliver specific contractual commitments between the council, GLA and Swan to establish the new Blackwall Trust, and will also meet covenants agreed with Natural England (who funded earlier works) as a condition of its withdrawal of objection to the council's original CPO for the area in 2013. This will avert uncertainty and ensure that the green space currently known as the Robin Hood Millennium Green is preserved for centuries to come as an accessible community space, whilst also putting in place a viable structure and funding for its ongoing management, overseen as a partnership with the local community.
- 16.2 Failure to make the requested CPO would jeopardise the comprehensive re-landscaping and improvement works for the existing green as a whole, and retain an unnecessary and unsustainable maintenance arrangement for those specific plots. This risk will be mitigated by the CPO and by ongoing discussions and negotiations with the Millennium Green Trustees to seek a voluntary handover of their interest, as described in the report.

17 CRIME AND DISORDER IMPLICATIONS

- 17.1 The regeneration and redevelopment of the area will reduce the current high incidence of crime and anti-social behaviour, deriving in part from the poor physical condition of the current housing and environment, by improving the social, economic and environmental well-being of the local residents.
- 17.2 Good design will improve safety and security across the area for example through developing previously derelict or underused sites, better overlooking of shared spaces, community engagement in management, new routes through the area, local housing office.
- 17.3 The Blackwall Reach project is being designed carefully by Swan, with housing and open space layouts taking on board the advice of specialists and planners to reduce the opportunities for criminal and other anti-social activity.
- 17.4 The new Blackwall Trust will fulfil the council's aspiration that holistic ownership and management arrangements be set up for the entire central open space. This will ensure that the improved green area at Blackwall Reach is held as an open recreational space in perpetuity, remaining accessible to the whole community, and providing efficient and well-funded day-to-day management and maintenance. Provision for organised events, which have been a feature of the existing space, will continue. Through the operations of the new Trust, which will include local residents and stakeholders in its management structure, recognition of the green as a valued community resource will be encouraged, and its use and management closely monitored so that any problems of anti-social behaviour or other incidences of crime can be addressed responsively.
- 17.5 There are likely to be other positive impacts in terms of crime and disorder through the community-focused projects that the new Trust will sponsor.

18 EFFICIENCY STATEMENT

- 18.1 Section 3 of the Local Government Act 1999 requires best value authorities, including the Council, to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". It is considered that the use of Council resources, within a model that delivers significant housing, educational and community provision for the area, while aiming to recover costs, will satisfy that duty.
- 18.2 The Blackwall Reach Regeneration Project is providing up to 1575 new homes with some 207 Council rented homes being replaced with up to 679 new affordable homes (including 561 homes for rent at traditional social rent levels) and 45 private homes with up to 896 new ones, including replacement homes for displaced resident owners, at nil extra cost. Value is also being demonstrated by the regeneration project generating up to £14,480,456 in S106 planning gain contributions for the area in addition to other benefits of the

scheme. This funding has already contributed to early delivery of a new expanded local school.

- 18.3 This report is to enable the set-up of a new Trust to broaden regeneration benefits to the wider community. This charitable body will establish and support worthwhile projects for the benefit of local residents, long into the future and funded by Swan Housing Association as the Council and Mayor of London's development partner for this regeneration project.
- 18.4 This report is also to help enable an area of open space to be assembled, protected from development, landscaped and leased to the new Trust as custodian, whilst being maintained by Swan Housing Association. Much of this land was transferred to the MGT in 2001, but as the MGT is lacking the resources to look after the site, the Council and Tower Hamlets Homes had been required to step in to maintain the area.

Linked Reports, Appendices and Background Documents

Appendices

- Appendix 1 Map showing the land proposed to be compulsorily purchased.
- Appendix 2 Equalities Analysis Assurance Checklist

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None

Appendices

Appendix 1: Map showing land proposed to be compulsorily purchased (2018 CPO) or subject to acquisition under 2013 CPO.

