

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

(REF APP/PCU/CPOP/Y5420/3316757)

PUBLIC INQUIRY 7-10, 14-17 AND 21-22 NOVEMBER 2023

PROOF OF EVIDENCE OF COLIN COTTAGE BSc.(Hons) MRICS

SCHEME VIABILITY

**ON BEHALF OF CANVAX LIMITED, GOODSYARD TOTTENHAM
LIMITED, MELDENE LIMITED, TOTTENHAM HOTSPUR STADIUM
LIMITED, PAXTON17 LIMITED, STAREDARE LIMITED and HIGH
ROAD WEST (TOTTENHAM) LIMITED**

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1. QUALIFICATIONS AND EXPERIENCE

- 1.1 I am Colin Michael David Cottage, Managing Director of Compensation at Ardent Management Limited (“**Ardent**”), an independent firm of property consultants specialising in compulsory purchase and compensation. I have worked in the property industry for circa 35 years since obtaining an Honours Degree in Land Administration in 1988. I qualified as a Chartered Surveyor in 1991 and I am also a member of the Compulsory Purchase Association. I was chairman of the Association in 2016-2017.
- 1.2 I joined Ardent on 1 September 2018, where I direct a team advising on a wide range of regeneration, transport and utilities infrastructure projects involving site assembly through compulsory purchase. Prior to joining Ardent, from 2004, I was a partner at Glenny LLP, where I led the firm’s Regeneration & Infrastructure Division; the primary function of which was to provide advice in relation to compulsory purchase and compensation. Although Glenny LLP is predominantly a regional practice, operating in North, East and Southeast London, Essex, Hertfordshire and Kent, the Regeneration & Infrastructure Division operated nationwide.
- 1.3 I have provided advice on compulsory purchase and compensation matters for more than 25 years and have specialised in this area of work since 2004. Between 2004 and 2015, I was one of the London Development Agency’s key advisors for the CPO used to acquire land for the 2012 Olympic Games, while my team at Ardent currently advises on projects that include HS2, East West Rail, West Yorkshire Mass Transit, and regeneration schemes in locations that include the London Boroughs of Havering, Camden, Hackney, Barnet, Lambeth and Lewisham.
- 1.4 In addition to acting for acquiring authorities, I also act for businesses and individuals affected by compulsory acquisition. I am currently advising claimants in relation to, the Lower Thames Crossing, the Trafford Metrolink Extension, the M25 Junction 10 Wisley Interchange and the Western Gateway Regeneration project in Ilford.
- 1.5 A significant proportion of the work I undertake involves CPOs used to deliver regeneration and development where land can have pre-existing development potential. I therefore have wide ranging experience of dealing with claims for compensation where development value and the viability of development is a factor.

- 1.6 I also have experience of valuing land with development potential for acquisition and loan finance purposes and have undertaken development viability reviews for the purpose of agreeing affordable housing allocations and planning contributions.
- 1.7 At Glenny LLP, in addition to running the Regeneration & Infrastructure Division, I also led a team undertaking valuation and lease advisory work in East London and undertook, or oversaw, a wide range of commercial and property valuations during my time there, including development land valuations. My valuation team carried out 300-400 valuations annually, approximately 10-15% of which involved development land. Our clients included most of the major banks and I also personally valued land for Higgins, Barrett Homes, L&Q, Persimmon Homes, Countryside and Taylor Wimpey, as well as a number of smaller local developers.
- 1.8 Between 2008 and 2018 I provided the London Borough of Havering with advice in relation to affordable housing viability. This involved assessing affordable housing viability appraisals prepared on behalf of developers, undertaking alternative appraisals where appropriate and negotiating affordable housing numbers with developers. During the same period I also provided planning viability advice to a number of developers and negotiated affordable housing numbers with local planning authorities on their behalf.
- 1.9 I am currently advising a number of CPO Acquiring Authorities, and claimants, on the issue of development viability in relation to the granting of compulsory purchase powers. An issue which has been thrown into sharp focus since the decision not to confirm the Vicarage Fields, Barking CPO.
- 1.10 I have provided written and oral expert evidence at Public Inquiry, the High Court and the Upper Tribunal (Lands Chamber). I also gave oral evidence in Parliament to the Bill Committee considering compensation issues for the Neighbourhood Planning Act 2017. I am a RICS accredited expert witness.

2. MY INSTRUCTIONS AND THE SCOPE OF MY EVIDENCE

- 2.1 I am instructed by a number of companies within the Tottenham Hotspur Football Club (“**THFC**”) group structure to prepare a proof of evidence in relation to their objection to the London Borough of Haringey (High Road West Phase A) Compulsory Purchase Order (“**the CPO**”) and to provide further oral evidence at Public Inquiry, if required.
- 2.2 My evidence considers the financial viability of the scheme of development that underlies the CPO (“**the CPO Scheme**”), why the CPO Scheme’s viability is relevant in terms of the confirmation of compulsory purchase powers, and the extent to which the London Borough of Haringey (“**the Council**”), and its development partner Lendlease (High Road West) Limited (“**Lendlease**”), have demonstrated that the CPO Scheme is viable.
- 2.3 In presenting my evidence I have considered the following matters:
- (a) What is the CPO Scheme and how does it differ from the development for which planning permission has been granted (“**the Regeneration Scheme**”)?
 - (b) Government Guidance on the relevance of scheme viability to the justification of the grant of compulsory purchase powers
 - (c) Council policy in terms of how a development must be demonstrably viable to justify compulsory purchase
 - (d) How the Development Agreement between the Council and Lendlease deals with scheme viability
 - (e) The scope of the viability appraisals undertaken to date for the Regeneration Scheme and the conclusions reached from those appraisals
 - (f) Whether the CPO Scheme is viable and the factors that underpin my opinion on this issue.
- 2.4 In preparing this proof of evidence I have had regard (where appropriate) to the following guidance and professional standards.
- (a) The Department for Levelling Up, Housing and Communities Guidance on the Compulsory Purchase Process and the Criche Down Rules (last updated July 2019) [CD5.1]
 - (b) RICS Professional Standard – Valuation of Development Property (effective February 2020)

- (c) RICS Professional Standard – Assessing viability in planning under the National Planning Policy Framework 2019 for England (effective July 2021)
- (d) RICS Professional Statement - Surveyors advising in respect of compulsory purchase and statutory compensation 1st edition (April 2017)
- (e) RICS Valuation – Global Standards (effective January 2022)

3. THE CPO SCHEME

- 3.1 The area of land over which the Council is seeking to secure compulsory purchase powers in order to deliver the CPO Scheme (“**the Order Land**”) comprises circa 4.2 hectares in North Tottenham, situated either side of the London Overground Railway line to the south of White Hart Lane. The majority of the Order Land lies between the railway line and High Road West, but there is also a smaller area to the west of the railway, between Headcorn Road and Tenterden Road, where Whitehall Lodge and the Whitehall & Tenterden Community Centre are located.
- 3.2 Currently, the Order Land is in mixed commercial/residential use, and a large proportion of it is occupied by the Love Lane Estate – a 1960’s residential estate made up of 10 blocks of flats, between 4 and 10 storeys in height. Immediately to the east of the Order Land stands the THFC stadium. A plan illustrating the Order Land is at CD 1.2.
- 3.3 The CPO Scheme involves the demolition of existing buildings on the Order Land and the development of between 127,500 sq.m and 156,500 sq.m of residential floorspace, equating to 1,350 and 1,665 new homes. Of these 40% (by habitable room) will be affordable, including 500 social rented Council homes to replace those that will be lost from the Love Lane Estate.
- 3.4 A new Library and Learning Centre will also be provided, which will include enterprise and business space, adult learning facilities, a children’s library and flexible spaces for community and cultural activities. A new public square, Moselle Square, with a minimum area of 3,500 sqm will be part of the development, as will new communal residents’ amenity space, landscaping, parking provision, a District Energy Network and a pedestrian link between Whitehall Street and Headcorn Road. Although the quantum of floorspace has not been confirmed, it is further proposed that the CPO Scheme will provide new retail, leisure and office space, together with a health centre.¹
- 3.5 Planning permission for the CPO Scheme was granted on 31 August 2022, as part of planning permission for the wider Regeneration Scheme that also includes land to the north of White Hart Lane (Ref HGY/2021/3175) [CD4.28]. In relation to the CPO Scheme the (amended) planning permission grants detailed consent for Plot A, which will comprise two residential blocks providing 61 social rented residential dwellings,² and outline consent for a further 6 development Plots B-G.
- 3.6 Plots H-N included within the planning permission for the Regeneration Scheme (which would provide between 540 and 1360 residential dwellings (40% affordable by

¹ See paragraph 5.5 of the CPO Statement of Case

² See paragraph 5.10 of the CPO Statement of Case

habitable room), together with commercial, retail, learning and community buildings, and open space (including a new public park), are not part of the CPO Scheme.³

3.7 An illustrative masterplan for the Regeneration Scheme was submitted with the application for the planning permission providing an example development layout and strategy. The illustrative masterplan shows a mixed-use development comprising residential, leisure, commercial, office and local community uses with a new 0.35-hectare public square and a library and learning centre spread across seven plots, with buildings between 5 and 29 storeys in height.⁴ The illustrative masterplan is not the only way in which development of the Regeneration Scheme could be brought forward, but it does represent one potential solution against which the viability of the Regeneration Scheme (or the CPO Scheme) can be reasonably assessed.

3.8 A comparison of the extent of development proposed within the illustrative masterplan for the CPO Scheme and the Regeneration Scheme is set out below. The areas shown are Gross Internal Areas (“**GIA**”).

Plot	CPO Scheme	Regeneration Scheme
A	61 residential Units 5,847 sq.m	61 Residential Units 5,847 sq.m
B	331 Residential Units 30,161 sq.m	331 Residential Units 30,161 sq.m
C	231 Residential Units 21,559 sq.m Use Class E (a-c) - 343 sq.m Use Class E (d) – 736 sq.m	231 Residential Units 21,559 sq.m Use Class E (a-c) - 343 sq.m Use Class E (d) – 736 sq.m
D	380 Residential Units 30,404 sq.m Use Class E (a-c) - 677 sq.m Energy Centre- 361 sq.m	380 Residential Units 30,404 sq.m Use Class E (a-c) - 677 sq.m Energy Centre- 361 sq.m
E	Use Class E (a-c) – 2,071 sq.m Use Class F1 – 1,526 sq.m	Use Class E (a-c) – 2,071 sq.m Use Class F1 – 1,526 sq.m
F	445 Residential Units 37,791 sq.m Use Class E (a-c) - 846 sq.m Use Class E (d) – 368 sq.m Use Class E (g) – 63 sq.m	445 Residential Units 37,791 sq.m Use Class E (a-c) - 846 sq.m Use Class E (d) – 368 sq.m Use Class E (g) – 63 sq.m
G	40 Residential Units 3,190 sq.m Use Class E (a-c) – 350 sq.m	40 Residential Units 3,190 sq.m Use Class E (a-c) – 350 sq.m

³ See paragraph 5.21 of the CPO Statement of Case

⁴ See paragraphs 5.14 and 5.15 of the CPO Statement of Case

H		26 Residential Units 2,431 sq.m Use Class E (g) – 975 sq.m
I		68 Residential Units 5,659 sq.m Use Class E (a-c) - 473 sq.m Use Class E (g) – 1,189 sq.m
J		239 Residential Units 19,474 sq.m Use Class E (a-c) - 146 sq.m
K		140 Residential Units 10,990 sq.m Use Class E (g) – 2,789 sq.m
L		232 Residential Units 19,346 sq.m
M		271 Residential Units 21,655 sq.m Use Class F2 – 173 sq.m
N		149 Residential Units 12,464 sq.m Use Class E (a-c) - 243 sq.m
The Grange		Use Class F2 – 680 sq.m
Station Master House		Use Class E (g) – 247 sq.m
The Chapel		Use Class F1 – 378 sq.m
Postmaster's House		Use Class E (g) – 60 sq.m
865 High Road		Unknown
6A White Hart Lane		Use Class E (a-c) - 79 sq.m
La Royale		Use Class E (a-c) - 231 sq.m

3.9 Based on the illustrative masterplan proposal, the CPO Scheme and the Regeneration Scheme can therefore, in summary, be compared as follows in terms of the amount of development that will be provided.

Use	CPO Scheme	Regeneration Scheme
Residential	1,488 Units (57.0%)	2,612 units
	128,952 sq.m (58.4%)	220,971 sq.m
Use Class E (a-c)	4,287 sq.m (78.5%)	5,459 sq.m
Use Class E (d)	1,104 sq.m (100%)	1,104 sq.m
Use Class E (g)	63 sq.m (1.2%)	5,323 sq.m
Use Class F1	1,526 sq.m (80.1%)	1,904 sq.m
Use Class F2	Nil (0%)	853 sq.m
Energy Centre	361 sq.m (100%)	361 sq.m
Total	136,293 sq.m (57.8%)	235,975 sq.m

- 3.10 For the proposed residential accommodation, the split between the CPO Scheme and the Regeneration Scheme in terms of market sale and affordable housing is as follows. The percentages shown in brackets are the percentage of residential units provided by the CPO Scheme in comparison to the Regeneration Scheme:

Tenure	CPO Scheme	Regeneration Scheme
Market Sale	913 units (53.8%)	1,696 units
Social Rented	501 units (100%)	500 units
Shared Ownership	74 units (17.8%)	416 units
TOTAL	1,488 units (57.0%)	2,612 units

- 3.11 I note that the illustrative masterplan suggests provision of more than the minimum 1,350 new homes the CPO Statement of Case says the CPO Scheme will provide.⁵ As the Statement of Case also confirms that 500 social rented homes will be provided by the CPO Scheme, any reduction in housing numbers would therefore presumably be in the form of market Sale or Shared Ownership homes.

⁵ See paragraph 1.13 of the CPO Statement of Case

- 3.12 The CPO Scheme will be delivered over seven phases, with work projected to start on the first phase in Q4 2023 and complete on the last phase in Q2 2034 (126 months).⁶ This is a slightly longer construction period than was originally envisaged for the Regeneration Scheme, which was due to be commenced in September 2022 and completed in January 2032 (112 months).⁷

⁶ See paragraph 7.42 of the CPO Statement of Case

⁷ See paragraph 1.6.3.1 CD 4.33

4. CPO GUIDANCE AND POLICY

The CPO Guidance

- 4.1 Paragraph 106 of the Department for Levelling Up, Housing and Communities Guidance on the Compulsory Purchase Process and the Crichel Down Rules (“**the CPO Guidance**”) [CD 5.1] makes clear that any decision whether to confirm a CPO made under section 226(1)(a) of the Town & Country Planning Act 1990 will be made on its own merits, but the various factors which the Secretary of State can be expected to consider include the potential financial viability of the scheme for which the land is being acquired. In relation to financial viability, paragraph 106 says:

‘the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the order before finalising the details of the replacement scheme and/or the statutory planning position.’

- 4.2 Paragraph 13 of the CPO Guidance explains how a confirming minister will consider an Acquiring Authority’s justification for a CPO and makes clear that 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.’

- 4.3 It seems reasonable to assume that ‘*necessary resources*’ will include the funding required to complete a CPO Scheme – which with a regeneration scheme involving a private sector developer is something directly linked to its financial viability and the appetite/contractual obligation of that developer to fund the scheme which the CPO is intended to deliver (in the public interest).

- 4.4 Paragraph 14 of the CPO Guidance deals with the requirement for an Acquiring Authority to provide information about the resource implications of a scheme, including sources of funding and the timing of funding. Paragraph 14 says:

'In preparing its justification, the acquiring authority should address:

a) **sources of funding** - *the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required. If the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include:*

- the degree to which other bodies (including the private sector) have agreed to make financial contributions or underwrite the scheme; and*
- the basis on which the contributions or underwriting is to be made*

b) **timing of that funding** - *funding should generally be available now or early in the process. Failing that, the confirming minister would expect funding to be available to complete the compulsory acquisition within the statutory period (see section 4 of the Compulsory Purchase Act 1965) following the operative date, and only in exceptional circumstances would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years.'*

- 4.5 This again speaks to the need for an Acquiring Authority to make clear how a scheme will be funded, and where that scheme involves funding from a private sector partner seeking a financial return, this will mean the scheme needs to be financially viable within the life of the CPO. Only in exceptional circumstances would it be reasonable to confirm a CPO where there is a material risk that the development it is intended to facilitate might not be implemented for a number of years because it is financially unviable.

The Development Management DPD

- 4.6 The need to demonstrate scheme viability to justify the use of compulsory purchase powers is also an integral part of the Council's planning policy. Policy DM56 of the Council's Development Management DPD [CD3.7] (which sets out planning policies to determine which developments are granted planning permission in Haringey) confirms that:

'The Council will support land assembly to achieve comprehensive and coordinated development and will use compulsory purchase powers, only where necessary, to assemble land for development in the borough where:

- a. *Landowners and developers can demonstrate they have:*

 - i) A viable, deliverable and Local Plan compliant scheme; [My Emphasis] *and*
 - ii) *Have made all reasonable attempts to acquire, or secure an option over, the land/ building(s) needed, through negotiation.*

- b. *Comprehensive redevelopment of the assembled site is required to deliver the site's allocation (including the requirements of a Masterplan where stated in the Plan); and*
- c. *The development proposed for the assembled site would contribute to the delivery of the Local Plan's objectives.*

Where compulsory purchase is necessary, applicants will be required to demonstrate how the associated costs impact upon development viability. [My Emphasis]

4.7 The financial viability of the CPO Scheme is therefore a relevant issue in terms of a decision to grant compulsory purchase powers at both a national and local level. Particularly in circumstances where the CPO Scheme will be brought forward by a private sector development partner which requires a target financial return in order to undertake the development and who may also need to attract third party funding.

4.8 Compulsory purchase is a draconian process that can have a significant impact on the lives of the landowners and occupiers, whose property interests, homes and businesses are affected by it. The CPO Guidance [CD 5.1] quite rightly makes clear that a CPO should only be progressed if there is 'a *compelling case in the public interest*',⁸ and there cannot be a compelling case if there are material doubts whether a scheme will be progressed because an Acquiring Authority is unable to demonstrate that it is viable.

Vicarage Field

4.9 A recent example of a CPO being refused on the basis of a failure to prove its viability was seen with the London Borough of Barking & Dagenham Council (Vicarage Field and surrounding land) Compulsory Purchase Order 2021. Despite the Inspector recognising a '*pressing need for redevelopment and the extremely compelling case for the CPO*' she concluded that she could not confirm that '*the compulsory acquisition of the land included in this Order is proportionate or justified in the public interest.*'⁹

4.10 This was because the only viability evidence made available to the Public Inquiry was a 2016 viability appraisal review for an outline planning permission that confirmed the Vicarage Fields scheme was '*substantially unviable.*' No updated appraisal was provided by the Acquiring Authority or its development partner, and the Inspector found

⁸ See Paragraphs 2 and 12 of the CPO Guidance

⁹ Paragraph 377 of the Inspector's decision on the Vicarage Field CPO.

that there was ‘a fundamental lack of tangible and substantive evidence on viability’ and that ‘Given the gravity of the 2016 appraisal, and the lack of an updated appraisal, I cannot be certain that the scheme is financially viable despite all assurances from the AA.’ The Inspector further noted that ‘it is for the Acquiring Authority to demonstrate substantive information as to the financial viability of the scheme. It has not done so in a way that convinces me.’¹⁰

4.11 The Inspector went on to say:

‘Consequently, because I cannot conclude that the scheme is financially viable, I cannot be confident that there is a reasonable prospect that the scheme will proceed at this time, or that the necessary resources are likely to be made available within a reasonable timescale. This is because there is an expectation of return, and no developer or investor would pursue a scheme that is not economically viable or feasible. This is even if it has access to funds, sees a long-term vision, or pools funds so that one scheme may perform better than another. The legal agreements also provide me with little comfort of delivery, despite the depreciating value of the lease.

4.12 *This makes it difficult to show conclusively that the compulsory acquisition of the land included in the Order is justified in the public interest at this time, as detailed by CPO Guidance.*¹¹

4.13 Having noted that paragraph 106 of the CPO Guidance says:

*‘The greater the uncertainty about the financial viability of the scheme, the more compelling the grounds for undertaking the compulsory purchase will need to be’*¹²

4.14 The inspector also described the efforts made to acquire the CPO lands by agreement as ‘largely *ineffective*’ and referenced objectors’ complaints that offers had not been at market value, there had been limited efforts to relocate those affected by the CPO, ‘not before dates’ had not been offered, full information was not provided at the outset and there was no specified case manager assigned to landowners.

¹⁰ Paragraph 372 of the Inspector’s decision on the Vicarage Field CPO.

¹¹ Paragraphs 373 and 374 of the Inspector’s decision on the Vicarage Field CPO.

¹² Paragraph 137 of the Inspector’s decision on the Vicarage Field CPO.

5. THE DEVELOPMENT AGREEMENT

- 5.1 The Council and Lendlease have entered into a Development Agreement, dated 20 December 2017 [CD 5.5], in order to deliver the Regeneration Scheme.¹³ The agreement sets out various mechanisms that regulate the delivery of development, including pre and post planning viability conditions. The viability conditions require appraisals to be undertaken for individual phases and sub-phases of development, as well as the CPO Scheme as a whole, before and after the grant of detailed planning consent for each phase.
- 5.2 I have only had sight of the redacted version of the Development Agreement provided to the Inquiry to date (CD 5.5). This limits my understanding of how the Development Agreement is intended to operate as important information, such as, Lendlease's target rate of return, and the long-stop and 'drop-dead' dates for meeting phase conditions (including conditions on scheme viability), have not been confirmed.
- 5.3 The failure to fully disclose the full terms of the Development Agreement means that the Council is unable to properly demonstrate to what extent Lendlease will be able to terminate the agreement in circumstances where one or more phases of the CPO Scheme proved to be unviable. In my opinion, this failure runs contrary to the requirements of paragraphs 13 and 14 of the CPO Guidance.
- 5.4 Notwithstanding the limitations created by the redaction, on the basis of the information that is available to me, I am able to make the following observations on the Development Agreement's terms as far as they relate to financial viability.

Pre-Planning Viability

- 5.6 Pursuant to Clause 8 of the Development Agreement, within 20 working days of the relevant date set out in the Development and Phasing Programme and prior to submission of an application for detailed planning permission, every phase of the Regeneration Scheme (other than Phase 1) that contains homes that will be offered on the open market for private sale is subject to the 'Pre-Planning Viability Condition.'
- 5.7 The Pre-Planning Viability Condition requires a financial appraisal using Microsoft Excel (or equivalent) showing a residual land value that demonstrates:
- (a) The phase is viable
 - (b) That any sub-phase of development and the remainder of the phase is also viable
 - (c) That the overall development remains viable
- 5.8 For the purpose of the Pre-Planning Viability Condition viability is defined as achievement of the 'Required Return'. The Required Return is redacted in the

¹³ See paragraph 7.2 of the CPO Statement of Case

published version of the Development Agreement, so I am unable to comment on the extent to which it might be realistically achievable (both currently and in the future), although I note that an IRR of 13% was agreed between DS2 and BNP for the purpose of the planning viability appraisal.¹⁴

- 5.9 The Pre-Planning Viability Condition is satisfied when the Steering Group (made up of three representatives of the Council and three representatives of Lendlease)¹⁵ has agreed in writing that the Pre-Planning appraisal satisfies every limb of the Pre-Planning Post Viability Condition, with any dispute being referred to an expert.
- 5.10 If the Pre-Planning Viability Condition is not satisfied, it is deemed to be a 'Mitigation Matter', and Lendlease is required to serve written notice of this to the Council. Clause 34 of the Development Agreement confirms that within 20 days (or such longer period as the parties may agree) of service of the notice Lendlease must present a 'Mitigation Plan' to the Council, which must demonstrate that it does not affect the viability of the remainder of the Regeneration Scheme.
- 5.11 A Mitigation Plan is a written plan that sets out proposals for mitigating a Mitigation Matter (i.e. the inability to achieve the Required Return) whilst still delivering:
- (a) The 'Council's Facilities', comprising:
 - a) the 191 Council Homes that the Regeneration Scheme seeks to re-provide,
 - b) the library and learning centre,
 - c) the shell and core of the Energy Centre,
 - d) the Primary Heat Network, and
 - e) the Secondary Heat Network
 - (b) The 'Core Requirements', comprising:
 - a) 1,400 new high-quality homes,
 - b) 30% (by unit number) affordable housing including a total of 500 new high quality social homes and 46 shared equity homes,
 - c) 4,800 sq.m GIA of A1, A3 and A4 retail space,
 - d) 3,000 sq.m GIA of D2 leisure space,
 - e) 1,000 sq.m GIA of B1 business space,
 - f) a new 1,400 sq.m GIA library and learning centre (including fit out),
 - g) improvements to the landscape and public realm including a major new link between an enhanced White Hart Lane Station and THFC,

¹⁴ See CD 4.36

¹⁵ See clause 31.2 of CD 5.5

- h) shell and core (comprising not less than 1,260 sq.m and not less than 300 sq.m thermal store) for a new energy centre sized to accommodate all necessary combined heat and power and energy plant and equipment to supply heat to the Regeneration Scheme and the wider north Tottenham area in accordance with the Energy Centre Shell and Core Specification,
- i) Suitable infrastructure to be installed throughout the site to transport heat from the Energy Centre to the Regeneration Scheme
- j) Suitable infrastructure to be installed within all buildings in the Regeneration Scheme to ensure compatibility with the District Energy Network (“**DEN**”)

5.12 A Mitigation Plan may include any or all of the following:

- (a) Reducing the level of Lendlease’s return
- (b) Carrying forwards ‘Phase Deficits’ – a sum equal to the negative Residual Land Value yielded by the viability appraisal
- (c) Substituting alternative phases
- (d) Suspending the proposed development of a phase
- (e) Combining Phases
- (f) Waiving Phase Conditions – i.e. the pre-Planning Viability Condition (if the phase contains homes for private sale), the Affordable Housing Grant Condition (if the phase has affordable housing), the Post Planning Viability Condition (if the phase contains homes for private sale), the vacant possession condition, the Milestone Condition, the Socio Economic Output Condition, the Building Contract Condition and the Delivery Methodology Condition
- (g) Reconfiguring a phase layout
- (h) Dividing a phase into a number of sub-phases
- (i) Creating a “market rental” or other scheme to mitigate lack of demand, or
- (j) Other Solutions

5.13 One ‘Other Solution’ that might be possible under the Development Agreement is a reduction in affordable housing numbers. Under the Development Agreement the Council’s ‘Core Requirement’ for affordable is 30% by unit number (as opposed to the 40% by habitable room it is said the CPO Scheme will deliver) including 500 social rent homes and 46 shared equity homes.¹⁶ However, as far as I am able to determine, subject to the Core Requirements, there are no conditions within the Development Agreement that would not allow affordable housing numbers to be reduced on grounds of viability.

¹⁶ See Background – paragraph (C) (ii) CD 5.5

- 5.14 If the terms of a Mitigation Plan cannot be agreed between the parties, the terms can be determined pursuant to the Dispute Resolution provisions set out at Clause 33 of the Development Agreement – which includes escalating discussions to senior representatives of the parties but may also potentially involve the appointment of an independent expert if agreement still cannot be reached.
- 5.15 If the Mitigation Plan successfully resolves the Mitigation Matter, Lendlease must notify the Council as soon as practicable after the Mitigation Matter ceases or no longer prevents Lendlease’s compliance with its obligations under the agreement. If the Mitigation Plan does not resolve the mitigation matter, then the Mitigation Matter will be determined pursuant to the Clause 33 dispute resolution mechanism.
- 5.16 In relation to viability, in my opinion, this appears as if it may be a circular process as if a determined Mitigation Plan does not resolve the Mitigation Matter, it is not clear how referring it for further determination under the dispute resolution mechanism will produce any different outcome.

Post - Planning Viability

- 5.17 In addition to the Pre-Planning Viability Condition, Pursuant to Clause 11 of the Development Agreement, within 20 working days of satisfaction of all other Phase Conditions, Lendlease is required to submit a Post Planning Appraisal, on an open book basis, for every phase of the Regeneration Scheme (other than Phase 1) that contains homes that will be offered on the open market for private sale, together with a statement confirming it considers that the Post Planning Viability Condition is satisfied.
- 5.18 The Post Planning Viability Condition is an appraisal of the relevant phase of development, and the overall site that demonstrates:
- (a) That the relevant phase remains viable
 - (b) In the case of each sub-phase that both (i) that sub-phase and (ii) that sub-phase and the remainder of the phase that the sub-phase forms part and in respect of which no Phase Lease has yet been granted remains viable: and in each case
 - (c) That the overall development remains viable
- 5.19 As with the Pre-Planning Viability Condition, post planning viability is defined as achievement of the ‘Required Return’. The Post Planning Viability Condition is satisfied when the Steering Group has agreed in writing that the Post Planning appraisal satisfies every limb of the Post Planning Post Viability Condition, with any dispute being referred to an expert.¹⁷ If it is agreed that the Post Planning Viability Condition has not

¹⁷ See clause 11.5 CD 5.5

been satisfied, it will be deemed a Mitigation matter, to be dealt with as set out at paragraphs 5.9 – 5.14 above.

- 5.20 Where there are no private sale homes in a phase, Lendlease is still required to undertake an open book Post Planning Appraisal and serve it on the Council.

Additional Appraisals

- 5.21 In addition to the Pre and Post Viability Appraisals, no less frequently than twice a year from the date of the Agreement, Lendlease must provide the Council with:

- i) An updated Financial Model taking into account past and future phases
- ii) An updated Phase Appraisal for the then current phase¹⁸

Termination

- 5.22 Clause 37.3. of the development Agreement confirms:

(1) *Without prejudice to any other right or ability to terminate this Agreement, if a Phase Unconditional Date has not occurred on or before the relevant Phase Condition Longstop Date and/or Phase Condition Drop Dead Date (subject to clause 37.3.3) then either the Council or the Partner may determine this Agreement in relation only to the Phase for which the Phase Unconditional Date has not occurred at any time after the Phase Condition Longstop Date and/or Phase Condition Drop Dead Date by serving written notice to that effect on the other PROVIDED That a party may only terminate aforesaid where there are no outstanding material breaches of its obligations in relation to all outstanding Phase Conditions relating to that Phase.*

(2) *On the date 20 working days after service of such notice this Agreement will determine only in relation to the relevant Phase (save where the relevant Phase Unconditional Date has occurred prior to the date on which the Agreement would otherwise have terminated under this clause 3.7.1.*

(3) *If on the relevant Phase Condition Longstop Date:-*

A CPO has been submitted prior to such date to the Secretary of State for confirmation which comprises interests in the site and/or new rights for the benefit of the Development and one or more objections to the CPO have been submitted prior to such date to the Secretary of State, or

¹⁸ See clause 31.6.2 CD 5.5

A CPO comprising interest in the site and/or new rights for the benefit of the Development has been confirmed by the Secretary of State but is in the subject of Proceedings

Then the relevant Phase Condition Longstop Date will be extended to the date six calendar months after the date on which matters have finally been disposed of or determined (including any hearing inquiry Appeal or further proceedings in relation thereto).'

- 5.23 A Phase Unconditional Date is the date upon which the last of the Phase Conditions for a Phase has been validly satisfied or deemed or determined to be satisfied. Phase Conditions are defined in the Development Agreement as *'the Phase 1 Conditions and/or the Subsequent Phase Conditions as the case may be.'* Subsequent Phase Conditions include the Pre and Post Planning Viability Conditions.
- 5.24 The Subsequent Phase Conditions include both the Pre-Planning and Post Planning Viability Conditions. Therefore, if the Pre-Planning and Post-Planning Viability Conditions are not satisfied and a Mitigation Plan is not agreed, Lendlease would be able to terminate the Development Agreement in relation to any Phase that was unviable.
- 5.25 The Longstop and Drop Dead Dates referred to in the Development Agreement have been redacted. It is therefore not currently possible to determine the date by which the Pre and Post Planning Viability Conditions would need to be satisfied before the Development Agreement could be terminated in relation to any particular phase.

Conclusions

- 5.26 It is clear that regular testing of viability is an integral part of the Development Agreement. Pre and Post Planning viability assessments are undertaken for each phase, as well as the scheme as a whole. There is also provision for additional periodic viability appraisals. If a phase is determined to not be viable, a Mitigation Plan can be agreed for particular phase of development. However, it is not clear how any of the example Mitigation Plan solutions proposed in the Development Agreement would be likely to overcome the problem that a significant lack of viability would present.
- 5.27 For example, Lendlease might be unwilling to agree a reduced level of return for a phase if it considered that it would also not be able to achieve its target return for subsequent phases. Similarly carrying forward phase deficits is unlikely to be an attractive option if it is not clear that later phases will rebalance the deficit.
- 5.28 Substituting phases, merging phases or creating sub-phases would only be a solution if other phases of the CPO Scheme were viable (which if the scheme is unviable as a

whole is unlikely to be the case), while waiving Phase Conditions would do nothing to remove the underlying lack of viability.

- 5.29 Reconfiguring a phase layout is also unlikely to make an unviable phase viable unless, potentially, that reconfiguration involved a material change to the masterplan in terms of increased density or a change in the proportion of affordable housing provided. Creating a 'market rental' scheme might be of some assistance in terms of generating demand if the sales market collapsed but is unlikely to materially improve viability.
- 5.30 This would leave suspending the development of a phase or some other, currently undefined, solution – which might include the Council and Lendlease agreeing a reduced affordable housing requirement, notwithstanding the currently stated aspiration to provide 40% affordable homes by habitable room. I note that the Development Agreement only requires 30% (by unit number) affordable housing to be provided, although this does require to provision of 500 social rented homes and 46 intermediate homes. If the CPO Scheme were unviable overall, it is unlikely that only one phase would be suspended however, and the more probable outcome is that the entire scheme would be 'mothballed' until such time as viability could be ensured.
- 5.31 Alternatively, if a Mitigation Plan could not be agreed or determined within a specific timetable the Development Agreement could be terminated in relation to a specific phase. It is also possible that if the CPO Scheme were considered to be unviable overall, and there was no clear prospect of it becoming viable within an acceptable time period, it could be determined in relation to all outstanding phases.

6. THE ACQUIRING AUTHORITY'S VIABILITY APPRAISAL

- 6.1 Until 5 October 2023, neither the Council nor Lendlease had produced a publicly available viability appraisal for the CPO Scheme and although viability assessments were undertaken for planning purposes, to support the Planning Application, these only related to the Regeneration Scheme.
- 6.2 An initial Financial Viability Assessment ('FVA') for the Regeneration Scheme, was prepared by DS2 on behalf of Lendlease on 28 October 2021 [CD 4.43], with a second amended version of the same FVA issued on 19 May 2022 [CD 4.33]. Although the two FVA's were issued at different dates, they are, in essence, identical and reach the same conclusions.
- 6.3 The FVA report confirmed that the purpose of the FVA is '*to test the maximum level of affordable housing and additional financial obligations, which can be supported by the Proposed Development¹⁹ without impeding the viability of the project and the chances of delivery.*²⁰
- 6.4 In order to do this the FVA measured the viability of the illustrative masterplan for the Regeneration Scheme by undertaking a residual appraisal that deducts a Development Costs and a Benchmark Land Value ('BLV') from the scheme's Gross Development Value ('GDV') in order to derive a residual level of developer's profit - in the form of an Internal rate of return ('IRR'). The derived IRR is then compared to a '*benchmark profit rate*' and, if it exceeds it, the development is deemed to be viable, while if it does not, it would be deemed to be unviable in terms of normal market expectations.²¹
- 6.5 Applying this methodology, the FVA adopted the following residual appraisal inputs.

¹⁹ The Regeneration Scheme

²⁰ See paragraph 1.1.1.3 CD 4.33

²¹ See paragraph 1.5.2.7 CD 4.33

Development Timetable

6.6 A summary of construction programme assumptions adopted in the FVA is set out below:²²

Development Stage	Blocks	Duration (months)	Date Start	Date End
Pre-Construction		6	Jan-22	Jun-22
Phase 1	A,D,G	48	Sep-22	Aug-26
Phase 2	F	41	Jun-25	Jun-28
Phase 3	B,C,E	37	Feb-29	Jan-32
Phase 4	L1,M1,M2 J1,K2	75	Jun-22	Aug-28
Phase 5	C2,H,I1,J2,K1 L2,M3,N1,N2 N3,N4	104	Feb-23	Oct-31
Total Construction	74 months			

6.7 Although the phase numbers don't align with their start and end dates (for example phase 3 has the latest start and end date of the 5 phases, while phase 5 has an earlier start date than phase 2 or 3), I have assumed that this is because it was intended that Phases 1-3, located to the south of White Hart Lane, were to be developed concurrently with phases 4-5, situated to the north of White Hart Lane.

6.8 I also note that Phase 2 is a period of 37 months, rather than the 41 months stated and while the total construction period for the Regeneration Scheme is said to be 74 months, Phase 5 alone appears to have a duration of 104 months. In fact, excluding the pre-construction period, the total development period estimated in the FVA for the Regeneration Scheme (as well as that part of it that comprises the CPO Scheme) was from September 2022 to January 2032. i.e. circa 112 months.

6.9 Because the application of construction time periods 'sit behind' the appraisal summary provided at Appendix 11 of the FVA (CD 4.33), I have been unable to form a clear view of the construction timetable assumed for the viability appraisal. However, this is not a material issue as the CPO Statement of Case confirms that the phasing and

²² See table 14 at paragraph 1.6.3.1 CD 4.33

construction programme for the CPO Scheme has recently been updated ‘to achieve early delivery of the affordable housing units’, as set out below.²³

Phase	Plots	Date Start	Date End
Phase 1A	A	Q4 2023	Q3 2025
Phase 1B	D	Q3 2025	Q3 2032
Phase 2	C1	Q3 2025	Q1 2028
Phase 3	B	Q3 2025	Q1 2029
Phase 4	C2	Q1 2027	Q3 2029
Phase 5	E	Q2 2028	Q1 2030
Phase 6	G	Q2 2028	Q4 2030
Phase 7	F	Q3 2028	Q2 2034

- 6.10 It will be noted that the expected development timetable for the CPO Scheme has now been pushed back, so that construction will take place between Q4 2023 and Q2 2034, a period of circa 126 months.

GDV

- 6.11 In terms of GDV the FVA assesses the value of both the private sale and affordable residential homes that the Regeneration Scheme would produce, as well as the value of parking spaces and the proposed commercial development.
- 6.12 The value of the private sale homes was derived from sale and asking prices for comparable new dwellings, with DS2 concluding that an average value of £700 per sq.ft. was achievable.²⁴
- 6.13 The value of car parking spaces was assessed at £25,000 per space,²⁵ although I note that those parking spaces to be provided within the area of the CPO Scheme are reserved for returning tenants, so that placing a value on them for the purpose of the FVA is not appropriate.
- 6.14 For the affordable homes, DS2 assessed value in accordance with Existing Use Value – Social Housing principles, arriving at a value of £110 per sq.ft. for the social rent housing,²⁶ and £420 per sq.ft for shared ownership housing.²⁷
- 6.15 I note from the FVA that 916 affordable units were to be provided by the Regeneration Scheme, of which 500 would have been social rent homes. In contrast, the CPO Statement of Case states that the CPO Scheme will produce a total of 1,350 – 1,665 new homes, at least 40% of which will be affordable housing by habitable room.

²³ See paragraph 7.42 of the CPO Statement of Case

²⁴ See paragraph 1.7.2.3 CD 4.33

²⁵ See paragraph 1.7.4.1 CD 4.33

²⁶ See paragraph 1.7.3.6 CD 4.33

²⁷ See paragraph 1.7.3.13 CD 4.33

Moreover, 500 units will be social rented.²⁸ Using the illustrative scheme assumed for the FVA as a guide, the CPO Scheme could therefore deliver 1,487 units, of which 574 would be affordable, 500 social rented and 74 shared ownership.

- 6.16 The percentage of low value social rented homes for the CPO Scheme is therefore much greater than for the Regeneration Scheme – 87.1%, rather than 54.6%.²⁹
- 6.17 For the shared ownership housing, I note that the adopted £420 per sq.ft value assumed homes would be affordable for households with an annual income of up to £90,000,³⁰ with DS2 indicating that the value of the shared ownership housing would reduce if lower income levels were introduced.³¹ This is relevant because, for London Shared Ownership Housing,³² the s.106 agreement for the Planning Permission restricts income to £40,000 per household for 1 and 2 bedroom homes and £60,000 per household for 3 bedroom homes within the first three months of marketing and £60,000 for all units during the following three month marketing period. The potential for a lower value to apply to some shared ownership housing has not been reflected however.
- 6.18 The FVA assumes that 50% of the private residential homes could be sold ‘off-plan’ and that thereafter units would be sold at a rate of 5-6 per month.³³ For the affordable social rent units a ‘golden-brick’ contract was assumed, with 20% of value paid when buildings were completed to first floor slab and the remainder of the value being paid in equal quarterly instalments throughout the construction period.³⁴
- 6.19 The value of the commercial accommodation provided by the illustrative masterplan was also assessed using comparable evidence, with DS2 adopting the following rents and yields:
- i) Retail (use classes E(a-c)) - an average rent of £25 per sq.ft³⁵ capitalised using a yield of 7%.³⁶ An 18 month rent-free period was also assumed.
 - ii) Offices (use classes E(g)) - an average rent of £27.50 per sq.ft³⁷ capitalised using a yield of 5%.³⁸ An 18 month rent-free period was also assumed.

²⁸ See paragraph 5.5 of the CPO Statement of Case

²⁹ $500/574 = 87.1\%$. $500/916 = 54.58\%$

³⁰ See paragraph 1.7.3.12

³¹ See paragraph 1.7.3.14

³² Which appears to include the shared ownership housing that will be provided by the CPO Scheme

³³ See paragraphs 1.6.4.1 – 1.6.4.3 CD 4.33

³⁴ See paragraph 1.7.3.6 CD 4.33

³⁵ See paragraph 1.7.5.7 CD 4.33

³⁶ See paragraph 1.7.5.12 CD 4.33

³⁷ See paragraph 1.7.5.19 CD 4.33

³⁸ See paragraph 1.7.5.22 CD 4.33

Sports Facilities (use classes E(d)) - an average rent of £15 per sq.ft capitalised using a yield of 7%.³⁹ An 18 month rent-free period was again assumed.

Grant Funding

- 6.20 Although not referenced in the FVA report, the FVA Appraisal included a total of £106,514,375 of grant funding for phases 1-3 of the illustrative Regeneration Scheme. The funding was assumed from three sources as set out below:

Grant Funding	£70,314,375
LBH Additional Affordable Revenue	£15,000,000
Mayor's Land Fund	£21,200,000
Total	£106,514,375

- 6.21 The CPO Statement of Case confirms that the Council's cabinet approved a GLA sourced funding package totalling £91,512,000 in March 2021,⁴⁰ and although at that time the Council was progressing the Regeneration Scheme, this level of funding would still appear to be available for the CPO Scheme.
- 6.22 From my reading of the (redacted) Affordable Housing Grant funding agreement, I understand that the grant is payable in two tranches, each being 50% of the total sum of £70,312,000. The first tranche is payable on the 'Start on Site Date' in March which cannot be extended beyond March 2023. I have assumed that the conditions to draw down the first tranche of grant have been met.
- 6.23 In relation to the second tranche of the payment the agreement references certain Milestones for the delivery of a particular number of units, but confirmation of what these milestones are is currently unclear. The agreement provides that the GLA can agree extensions to Milestones but there is also scope for the agreement to be terminated and in some circumstances request repayment. It therefore appears that there is currently no certainty that the second tranche of grant will be paid if practical completion is not achieved by a certain date.
- 6.24 In terms of the Mayor's Land Fund Agreement, the payments are split into three Tranches. The version of the agreement I have seen is redacted, so that I have been unable to determine the split between the Tranches. However, it is clear that the Council can apply for the First Tranche to be paid when a Start on Site has been made in respect of a redacted number of Dwellings. The Council can then apply for the Second and Third Tranches of funding when the respective Payment Dates have passed – these are defined by reference to the delivery of a certain number of dwellings

³⁹ See paragraph 1.7.5.32 CD 4.33

⁴⁰ See paragraph 2.28 of the CPO Statement of Case

at another date, which is redacted, but can be extended by the GLA in its absolute discretion.

- 6.25 The agreement also provides that the Council are obliged to procure a specified (but redacted) number of dwellings by a (redacted) date – with seemingly two longstop dates. There are requirements for Milestone dates to be hit and the GLA may terminate the agreement and require repayment if the milestones are not met.
- 6.26 Therefore, while I understand that the first tranche of the Mayor’s Land Fund payment has been drawn down, it is again possible that delays with delivery of the CPO Scheme could result in the balance of the payment not being made.

Development Costs

- 6.27 The FVA appraisal adopts a construction cost of £728,290,563 (£281 per sq.ft.), including a contractor’s contingency, for the illustrative scheme.⁴¹ No allowance is made for a developer’s contingency, although the FVA notes it would not be unreasonable to include one, particularly if there were a reduced IRR.⁴²
- 6.28 A further allowance of £73,233,798 (including a 20% addition for overheads and preliminaries) has been made for site wide infrastructure costs.⁴³
- 6.29 Professional fees have been reflected at 10% of construction costs.⁴⁴
- 6.30 Sales, disposal and marketing costs have been included in the appraisal as follows:
- (a) Residential Sale Marketing – 1.5% of market GDV
 - (b) Commercial Marketing - £2.50 per sq.ft
 - (c) Residential Sale Agent’s Fee – 1.5% of market GDV
 - (d) Market Sale Legal Fees - £1,000 per unit
 - (e) Commercial Sale Agent’s Fee – 0.5% of commercial GDV
 - (f) Commercial Letting Agent’s Fee – 10% of market rent⁴⁵
- 6.31 I note that no allowance was made for an affordable housing legal fee in the FVA, although in my experience this cost would normally be reflected in a viability appraisal.
- 6.32 An allowance has been made for ‘compensation costs’ that will need to be paid to assemble the Regeneration Scheme site in addition to the value of the property interests that need to be acquired. The FVA confirms that statutory Loss Payments have been accounted for, as well as disturbance payments for secure residential

⁴¹ See paragraph 1.8.2.2 CD 4.33

⁴² See paragraphs 1.8.3.3 - 4 CD 4.33

⁴³ See paragraphs 1.8.2.3 and 1.8.3.2 CD 4.33

⁴⁴ See paragraph 1.8.4.1 CD 4.33

⁴⁵ See paragraph 1.8.5.1 CD 4.33

tenants and resident residential leaseholders.⁴⁶ A further allowance has been made for non-resident residential leaseholders' re-investment costs, and leaseholder professional fees.⁴⁷

- 6.33 However, it would appear that the FVA does not include a full allowance for commercial leaseholder compensation,⁴⁸ and it also suggests that the compensation assessments are generally 'minimum figures',⁴⁹ or 'at the lower end of assumptions'.⁵⁰
- 6.34 An allowance has been made for CIL and s106 financial planning obligations at £10 million and £1,253,650 respectively, although it is noted that these are subject to verification.⁵¹
- 6.35 As viability has been measured against IRR (before finance costs), finance costs have not been applied. IRR is a metric used in financial analysis to estimate the profitability of potential investments and generally the greater the risk associated with an investment the greater the target IRR will be. Therefore, while finance costs do not form part of an IRR appraisal, if interest rates increase, a developer's target IRR will also normally increase.
- 6.36 The FVA confirms that in determining an appropriate IRR for the regeneration Scheme, DS2 considered the following risks to be relevant:
- (a) A lengthy development programme exposes the development to external fluctuations and changes over the development period.
 - (b) A large number of units coming on to the market as part of a regeneration development. The development is exposed to volatility in the local housing market and the number of units coming to the market will have an impact on absorption.
 - (c) Complex delivery requirements including neighbourly matters, decant strategies, acquisition of third-party land interest and the potential (I consider inevitable) need to require the Council to invoke their compulsory purchase powers to assemble the site.⁵²
- 6.37 Taking the above matters into account and following '*discussions with the Applicant (Lendlease) in regard to suitable profit targets they would anticipate from their*

⁴⁶ The residual appraisal at Appendix 11 of CD 4.33 only makes reference to Home Loss payments, but I have assumed that the costs accounted for here reflect all of the compensation referred to in the main body of the report

⁴⁷ See paragraphs 1.8.6.1 - 1.8.6.10 CD 4.33

⁴⁸ See paragraph 1.8.6.13 CD 4.33

⁴⁹ See paragraph 1.8.6.1 CD 4.33

⁵⁰ See paragraph 1.8.6.5 CD 4.33

⁵¹ See paragraphs 1.8.7.1 and 1.8.8.1 CD 4.33

⁵² See paragraph 1.8.10.9 CD 4.33

*experience of schemes of similar nature*⁵³ the FVA confirms that an IRR of 14% had been adopted. Although the Required Return agreed within the Development Agreement is redacted, I consider it reasonable to assume that it is likely to be aligned to the IRR adopted in the FVA.

Site Value

- 6.38 The approach taken to the assessment of site value (or a BLV) for the purpose of planning viability is different from that adopted for when assessing development viability generally. As the FVA confirms, a BLV for planning viability purposes can potentially be based on existing use value plus a premium ('**EUV+**'), alternative use value ('**AUV**') or Market Value ('**MV**');⁵⁴ with both the NPPG (May 2019), and the Mayor of London's Affordable Housing & Viability SPD (August 2017) confirming that an EUV+ approach should normally be adopted.⁵⁵
- 6.39 However, the approach that should be followed to the assessment of site value when assessing development viability generally, including the viability of a CPO scheme, is to adopt the actual expected cost of acquiring the land. That may involve using an agreed land price (possibly reflecting the conditional assumption of the grant of a planning permission), or in the case of a CPO, the estimated cost of acquiring the land needed for the scheme having regard to the statutory basis for assessing compulsory purchase compensation. This is the approach that has been adopted in the FVA.
- 6.40 For the purpose of the FVA, DS2 has helpfully considered the value of land within the regeneration Scheme to the north and south of White Hart Lane separately, with the land to the south of White Hart Lane being the land that it is intended to acquire under the CPO.
- 6.41 The FVA confirms that the tenanted residential properties on the Love Lane Estate have been valued using ProVal valuation software, while residential properties both on the estate that have been sold off under the Right to Buy scheme and above retail premises along the High Road have been valued using market comparables; assuming all of the properties are average sized two-bedroom units. It is not clear how robust this assumption is. DS2's conclusions on the value of the residential properties to be acquired are redacted.⁵⁶
- 6.42 The existing retail premises that will need to be acquired have been valued adopting an investment valuation approach based on market evidence for rental values and investment yields. The rents and yields adopted have also been redacted.⁵⁷

⁵³ See paragraph 1.8.10.10 CD 4.33

⁵⁴ See paragraph 1.5.3.2 CD 4.33

⁵⁵ See paragraphs 1.9.1.1 – 1.9.1.3 CD 4.33

⁵⁶ See paragraphs 1.9.2.3 – 1.9.2.15 CD 4.33

⁵⁷ See paragraphs 1.9.2.16 – 1.9.2.21 CD 4.33

- 6.43 Other uses currently undertaken on the land to the south of White Hart Lane include a health centre, garages, a library, an electricity sub-station, a derelict public house, a day care centre and a former residential care home. While a brief commentary is provided in terms of the valuation approach taken, the values adopted are again redacted.
- 6.44 In total the value of the land required for the land that comprises the CPO Scheme is estimated to be £33,792,250. The FVA says that a full schedule of EUV and compensation costs can be found at Appendix 9, but this is not included in the publicly available version of the FVA.⁵⁸ As I have noted above, no premium has been added to the market value estimates, so that the BLV reflects EUV, rather than EUV+, with a further allowance made for additional compensation that would be paid in the event of compulsory acquisition.
- 6.45 A similar market value approach to that adopted for the land to the south of White Hart Lane is adopted for the land to the north. This includes applying development land values to land with development potential. The total value of the land needed for developing the Regeneration Scheme to the north of White Hart Lane is estimated at £39,761,000.⁵⁹ As with the land to the South of White Hart Lane, no premium has been added to EUV, but an allowance has been made for compulsory purchase compensation.
- 6.46 While I consider that for the purpose of determining the viability of the Regeneration Scheme (and the CPO Scheme) it is correct to calculate site value, in this case, on the basis of statutory compulsory purchase compensation - which would include both the market value of the properties being acquired and other compensation, such as loss payments and 'disturbance' compensation - it is not clear that all of the statutory compensation that would need to be paid has been reflected in the FVA. Although an allowance has been made in the FVA for loss payments, recoverable professional fees and residential disturbance payments, the FVA makes clear that these are conservative estimates and also suggests that no allowance has been made for business disturbance, including possible extinguishment.⁶⁰
- 6.47 I also note from DS2's valuation of some of the land to the south of White Hart Lane (the CPO Scheme) that an electricity sub-station is assessed as having nil value, although under a CPO an Asset Protection Agreement would be required which is likely to involve a payment for the cost of relocating the sub-station. Moreover, no value is applied to the derelict public house, while under a CPO compensation would still need

⁵⁸ See paragraph 1.9.3.1 CD 4.33

⁵⁹ See paragraph 1.9.5.3 CD 4.33

⁶⁰ See paragraph 1.8.6.13 CD 4.33

to be paid to reflect the market value of the site, including any redevelopment potential it might have.⁶¹

- 6.48 It is further notable that the FVA confirms that CBRE's property cost estimate has not been used for the purpose of determining the BLV.⁶² However, this is precisely the value estimate against which the viability of the CPO Scheme and Regeneration Scheme should be assessed.

Appraisal Results

- 6.49 The conclusion reached from the FVA was that, at the date of appraisal, the Regeneration Scheme produced an IRR of 6.6% against the target rate of 14%, a deficit of 7.4%. i.e. the Regeneration Scheme was '*currently not viable with the anticipated planning and affordable housing liabilities.*'⁶³
- 6.50 The FVA also included a sensitivity analysis that demonstrated that the 14% IRR viability target could be achieved if either sales values could be increased by 10%, or construction costs could be reduced by 10%. On the basis of this analysis the FVA confirmed that Lendlease was prepared to proceed with the scheme (delivering 35% affordable housing), '*taking a view on future growth*' and the potential to reduce build costs.⁶⁴
- 6.51 In my opinion, when making this decision Lendlease was clearly acknowledging that there was a degree of risk around the viability of the Regeneration Scheme, as there was no guarantee that it could increase sales values or reduce build costs to the extent required to make the Regeneration Scheme viable. No explanation of what might happen if Lendlease's view on future growth and its ability to reduce build costs proves to be incorrect has yet been provided.

The Local Planning Authority's Review

- 6.52 In response to the original October 2021 FVA, the Local Planning Authority's ('LPA's') viability advisor, BNP Paribas ('BNP'), issued a December 2021 review report (CD 4.34) that challenged a number of the inputs into to the FVA including:
- (a) The absence of a 'maturity factor' to take account of the place-making benefits of the Regeneration Scheme on residential property values. BNP considered this should be represented by a 2.5% increase in the £700 per sq.ft average value adopted in the FVA for later phases of the Regeneration Scheme.⁶⁵

⁶¹ See Table 28 at paragraph 1.9.2.22 CD 4.33

⁶² See paragraph 1.9.1.6 CD 4.33

⁶³ See paragraph 1.11.1.6 CD 4.33

⁶⁴ See paragraphs 1.10.2.1 and 1.10.2.2 CD 4.33

⁶⁵ See Section 4.1.1 CD 4.34

- (b) The value of affordable housing. BNP considered a value of £132 per sq.ft to be appropriate for social rent housing and £471 per sq.ft for shared ownership housing, rather than the £110 per sq.ft and £420 per sq.ft adopted in the FVA.⁶⁶
- (c) The value of retail space. BNP considered a yield of 6.75% to be appropriate for valuing the retail accommodation, rather than the 7% yield adopted in the FVA.⁶⁷
- (d) The value of office space. BNP considered a 12-month rent free period to be appropriate, rather than the 18-month period adopted in the FVA.⁶⁸
- (e) The value of sporting facilities. BNP considered a rent of £16.50 per sq.ft and a 12-month rent free period to be appropriate, rather than the £15 per sq.ft and 18-month rent free period adopted in the FVA.⁶⁹
- (f) Construction costs. BNP adopted a total construction cost of £681,568,503, informed by a review undertaken by CDM Project Services ('**CDM**'). This contrasted with the £728,290,563 construction cost adopted in the FVA.⁷⁰
- (g) Infrastructure Costs. Again, informed by advice from CDM, BNP adopted site wide infrastructure costs of £72,414,082, rather than the £73,233,798 used in the FVA. However, BNP also added a 5% contingency.⁷¹
- (h) Private Residential Sale legal Fees. BNP considered legal costs of £800 per unit to be appropriate, rather than the £1,000 per unit adopted in the FVA.⁷²
- (i) Commercial Sale Agency Fee. BNP made no allowance for a commercial marketing fee but increased the commercial sales agency fee to 1% of the commercial space GDV.⁷³
- (j) IRR. BNP considered 12% to be an appropriate target IRR, rather than the 14% adopted in the FVA.⁷⁴

⁶⁶ See Table 4.1.2.1, section 4.1.2 CD 4.34

⁶⁷ See section 4.1.4 CD 4.34

⁶⁸ See section 4.1.4 CD 4.34

⁶⁹ See section 4.1.4 CD 4.34

⁷⁰ See section 4.2.1 CD 4.34

⁷¹ See section 4.2.2 CD 4.34

⁷² See section 4.2.8 CD 4.34

⁷³ See section 4.2.8 CD 4.34

⁷⁴ See section 4.2.9 CD 4.34

- (k) Phase 2 construction period. BNP assumed a 31-month construction period for phase 2 of the Regeneration Scheme, rather than the 41-month period adopted in the FVA.⁷⁵
 - (l) Private Residential Sales Rate. BNP considered that 8-10 private residential units per month would be sold after completion of the development, in contrast to the 5-6 units per month assumed in the FVA.⁷⁶
 - (m) BLV – BNP noted that the values the FVA applies to commercial properties to the south of White Hart Lane (i.e. the CPO Scheme area) is '*at the lower end of the range indicated by sales of retail units in the area*', but otherwise appear to have accepted the land value acquisition estimates set out in the FVA.⁷⁷
- 6.53 BNP's conclusion, incorporating the variations to the FVA appraisal set out above, was that the Regeneration Scheme produced an IRR of 11.32% against its amended target rate of 12%. i.e. a 0.68% deficit.⁷⁸ It also produced a sensitivity analysis indicating that the IRR might vary between 7.68% and 12.72% given variations on build costs and values of up to 10%.⁷⁹
- 6.54 In March 2022, BNP provided a further response to the FVA (CD 4.35). The further response confirmed:
- i) BNP's position of private residential sales values remained unchanged.
 - ii) BNP had amended its valuation of the affordable housing and now considered it appropriate to apply values of £124 per sq.ft and £380 per sq.ft to the social rented and shared ownership housing respectively.
 - iii) A yield of 6.75% had been agreed for retail premises.
 - iv) BNP was prepared to agree a 15-month rent free period for office space.
 - v) A rent of £16.50 per sq.ft for sporting premises had been agreed.
 - vi) It had been agreed (subject to confirmation) that parking revenue should be removed from the appraisal.
 - vii) The timing of grant funding was agreed (subject to confirmation).

⁷⁵ See section 4.3 CD 4.34

⁷⁶ See section 4.3 CD 4.34

⁷⁷ See section 5.1.2 CD 4.34

⁷⁸ See section 5.2 CD 4.34

⁷⁹ See section 5.3 CD 4.34

- viii) BNP's opinion on total construction costs remained unchanged at £681,586,503 (exclusive of contingency).
 - ix) Site wide infrastructure costs were agreed at £74,414,082.
 - x) The allowance for residential disturbance costs had been agreed (subject to confirmation).
 - xi) DS2's estimate of commercial leaseholder professional fees was accepted.
 - xii) Residential sales legal fees had been agreed at £800 per unit.
 - xiii) It was agreed that no allowance should be made for commercial marketing property costs and that instead commercial agency fees should be increased to 1% of commercial space GDV.
 - xiv) The target level of IRR remained unagreed with BNP considering it should be 12% and DS2 14%.
 - xv) BNP continued still considered the assumption that 8-10 private residential units could be sold per month was appropriate.
 - xvi) BNP considered that commercial units would be sold on practical completion. In contrast DS2 was assuming a 6-month void period.
 - xvii) In relation to BLV, it had been noted that DS2 had excluded a number of properties from their schedule. These had now been added, increasing the BLV. The value of a development site to the north of White Hart Lane had been agreed.
 - xviii) The value of the rented local authority accommodation in the BLV had been amended having received further information.
- 6.55 Taking the above amendments into account BNP was now of the view that the Regeneration Scheme produced an IRR of 8.94%, against a target of 12%. BNP therefore considered 35% affordable housing (by units) to be reasonable.
- 6.56 Following a further period of negotiation between DS2 and BNP, on 13 July 2022, DS2 issued a letter to Robbie McNaugher at the Council setting out an agreed position on the viability appraisal for the Regeneration Scheme (CD 4.36).
- 6.57 The letter noted that the approach to BLV remained unchanged, but the amount allowed for the BLV had changed following discussion with BNP and GLE. No confirmation of the amended BLV value was provided.

6.58 The letter did however confirm that it had been agreed that the appraisal of the indicative scheme used to assess the viability of the Regeneration Scheme now produced an IRR of 11.62%, against an agreed target rate of 13%.

6.59 In its final conclusion DS2 confirmed:

'In assessing the residual profit of the illustrative scheme in relation to the revised benchmark IRR of 13% the viability appraisal demonstrates that the Proposed development currently generates a deficit however the applicant is committed to the affordable housing offer as a minimum provision and a series of viability reviews that could improve the quantum of affordable housing over the lifetime of the development.'

6.60 As I explain in at section 7 of this proof, market conditions have deteriorated since the time the FVA inputs were agreed. Therefore, for both the Regeneration Scheme and the CPO Scheme the deficit generated against the target return agreed for the FVA will have increased and the level of risk surrounding the scheme's ability to generate the Required Return will have increased.

5th October 2023 Appraisals

6.61 On 5 October 2023, the Council provided an updated viability appraisal for the Regeneration Scheme and, for the first time, a viability appraisal of the CPO Scheme. However, no explanation or justification of the inputs into the appraisals have yet been received and until an explanation of the appraisals is provided it would be premature for me to make any detailed comment on them. I will instead provide my assessment in rebuttal once I have seen the Council's viability evidence.

6.62 In terms of a general overview, I however note the following in relation to the CPO Scheme Appraisal.

- i) Although the CPO Statement of Case says the CPO Scheme will comprise seven phases, the CPO Scheme Appraisal suggests only 4 phases. It is not clear, without further explanation, over what time period it is now assumed the development will be undertaken.
- ii) The size and number of units provided in some of the development blocks has changed.
- iii) Market Sales values have been increased to £730 per sq.ft and the affordable housing values have also been altered.
- iv) Build costs have been increased.
- v) Assumed acquisition costs have increased

- vi) Most significantly, ambitious sales value growth has been assumed, which has the effect of increasing market sales value income over the life of the development by circa 60%. While increases in build costs have also been assumed this is at a much lower rate.
- 6.63 The conclusion reached from the appraisal is that, reflecting the growth in values that has been assumed, the CPO Scheme produces an IRR of 11.59%, which is still below the agreed FVA target rate of return. It therefore appears that while for the agreed FVA the conclusion was reached that the Regeneration Scheme produced a very similar IRR of 11.62%, without assuming growth, and Lendlease decided to progress with the development '*taking a view on future growth*', the CPO Scheme now produces a similar return reflecting that view of future growth.
- 6.64 It is clear that adopting the same approach to the appraisal taken in the FVA, and excluding the bold value growth predictions that are now being assumed, the CPO Scheme IRR would be significantly below 11.59% and the Required Rate of Return provided in the Development Agreement. This suggests that the Council and Lendlease recognise that the CPO Scheme is less viable now than the regeneration Scheme was at the time the FVA was agreed.
- 6.65 Moreover, any failure to meet the assumed 60% increase in value growth target would result in a reduction in the IRR and the CPO Scheme's viability.

7. VIABILITY OF THE CPO SCHEME

- 7.1 Any viability appraisal for the CPO Scheme must be undertaken in isolation, without taking into account the prospect of development of the wider Regeneration Scheme. This is because there is no clearly foreseeable prospect of any further CPO's being promoted to deliver the Regeneration Scheme, nor any guarantee that the Council and Lendlease will bring forward the wider Regeneration Scheme at all.
- 7.2 Although, the Regeneration Scheme failed to meet the agreed financial return in July 2022, Lendlease has chosen to progress with the CPO Scheme, apparently '*taking a view on future growth*',⁸⁰ and possible changes to '*sales and build cost inputs*'.⁸¹ The CPO Statement of Reasons advised that Lendlease '*is satisfied that the development which will deliver the Scheme will be viable...*',⁸² [my emphasis] implying a recognition that the CPO Scheme was not currently viable, but might become so.
- 7.3 Following submission of THFC's objection, where this point was noted, in the CPO Statement of Case the statement on viability was amended to say '*Lendlease is satisfied that the development permitted by the Planning Permission is viable*'⁸³ [my emphasis]. However, the 5th October 2023 revised viability appraisals clearly point to the fact the CPO Scheme is not currently viable and would only become so on the assumption that there will be strong growth in new home values over an extended period that will significantly outstrip increases in build costs. Albeit even under this assumption the target rate of return set in the FVA would not be achieved.
- 7.4 To illustrate this point I have undertaken two indicative appraisals of the CPO Scheme in isolation, having regard to the development permitted under the Planning Permission and the illustrative scheme – which from the CPO Statement of Case still appears to provide a reasonable approximation of the development the Council and Lendlease intend to bring forward. While I note that the Council's 5 October 2023 appraisal of the CPO Scheme suggests a different form of development, I have had insufficient time to produce new appraisals to reflect this and, in any event, the differences are not so significant as to materially alter my appraisal results.
- 7.5 The first appraisal ('**Appraisal 1**') is based (as far as possible given the information available to me) on the appraisal inputs I understand to have been agreed between DS2 and BNP. The second appraisal ('**Appraisal 2**') is again primarily based on the agreed appraisal inputs, but also takes into account alterations to some of those inputs, which reflect changes in prices, costs and market conditions since the FVA was

⁸⁰ See paragraph 1.10.2.2 CD 4.33

⁸¹ See paragraph 1.11.1.7 CD 4.33

⁸² See paragraph 7.24, bullet 3 of the CPO Statement of Case

⁸³ See paragraph 7.38.7 of the CPO Statement of Case

produced and agreed, as well as new information provided in the 5th October 2023 appraisals.

Appraisal 1

7.6 With this appraisal the only alteration I have made to the FVA agreed by DS2 and BNP is to exclude those parts of the Regeneration Scheme not included in the CPO Scheme and adopt the revised development timetable set out in the CPO Statement of Case. There are however a number of inputs where DS2 and BNP apparently reached agreement, but that agreement has not been clarified in the documents made available to me. These include:

- i) The timing of grant funding – I have assumed that the grant funding only applies to social rent units and that 40% of the grant will be paid upon site acquisition, 35% on start on site and 25% on practical completion. I acknowledge that these assumptions may not reflect the actual payment pattern of grant funding and that I will need to make alterations to my appraisal if further information on funding is released.
- ii) The allowance on residential and commercial property disturbance costs. As the FVA confirms that the allowances adopted were conservative, I have made a 10% contingency addition to the costs stated in the FVA.
- iii) The post practical completion market sale rate. I have assumed 7 units per month, the mid-point between DS2 and BNP's estimates.
- iv) The date of sale of commercial premises. I have assumed sales would take place immediately after practical completion – in line with BNP's position.
- v) Increase in the BLV. I have added 5%, although this may be conservative. I have assumed that land would be acquired pursuant to the CPO in March 2025, circa 6 months prior to construction commencing on phases 1B, 2 and 3. I acknowledge that this is an over-simplification, as some land is likely to be acquired by agreement prior to March 2025, while payment for other land acquired under the CPO is likely to take the form of a 90% Acquiring Authority compensation estimate advance payment, on or after the date of vesting, with the remainder of the BLV paid at a later date. However, as trying to model the pattern of land acquisition payments on this basis is unlikely to provide any more accurate representation of when payments would actually be made than the broader assumption I have adopted, I consider my approach to be reasonable. I understand that no land will need to be acquired for phase 1A.

vi) The value of the rented local authority accommodation in the BLV. As it is unclear whether the alteration was up or down, I have made no further alteration to the BLV to take account of this.

7.7 A summary of Appraisal 1 is attached at Appendix CCA. It will be seen that adopting the Appraisal 1 assumptions the CPO Scheme produces an IRR of 4.88%, well below the agreed IRR for the Regeneration Scheme and the agreed target rate.

7.8 Reasons for this reduction will include:

- i) The extended development time period set out in the Statement of Case
- ii) The increased proportion of residential units that will be low value social housing homes
- iii) A reduction in the impact of value improvement through placemaking
- iv) Possible differences in other assumed inputs into the appraisal where any agreement reached between DS2 and BNP has not been made available.

Appraisal 2

7.9 Since the amended inputs to the FVA appraisal were agreed, market conditions have deteriorated and the delivery of large-scale mixed use regenerative development of the type proposed with the CPO Scheme has become more challenging. Macro-economic events, the cost-of-living crisis, high inflation and increasing interest rates have all had an impact on the market for new residential dwellings, commercial property and development land.

Market Overview

7.10 In its December 2021 review of the original FVA, BNP referenced the August 2021 Nationwide House Index Report which confirmed an increase in annual house price growth to 11% and a month-on-month increase of 2.1%. This was despite the tapering of stamp duty relief at the end of June 2021.

7.11 Both Nationwide and Halifax predicted that house price growth would continue, and the Halifax reported “Although there remains some uncertainty over the impact on employment from the unwinding of Government support schemes, on balance the risks to the macro-environment are receding, with confidence improving, the labour market recovering, and the economy expanding as restrictions are lifted. Overall, assuming a continuation of recent economic trends we expect the housing market to remain solid over the next few months, with annual price growth continuing to slow but remaining well into positive territory by the end of next year” (Halifax July 2021 Price Index).⁸⁴

⁸⁴ See the Market Commentary at section 4.1.1 CD 4.34

- 7.12 BNP also quoted from positive market commentaries issued by Savills in September 2021 and Molior in July 2021.
- 7.13 However, at the date of this proof, market conditions are far less positive. Nationwide's House Price Index September 2023 (See Appendix CCB) reported that annual house price growth stood at -5.3% year on year, and that housing market activity remained weak. Although London performed better than the national average there had still been a 3.8% annual value decline. Mortgages approved for house purchase in August were circa 30% below the monthly average in 2019, before the covid-19 pandemic.
- 7.14 Nationwide also noted that while there was now pressure on longer term interest rates, the bank rate was not expected to decline significantly in the years ahead.⁸⁵ It was considered likely that a combination of solid income growth together with modestly lower house prices and mortgage rates will gradually improve affordability over time, with housing market activity remaining fairly subdued in the interim.
- 7.15 The headlines from the Halifax House Price Index August 2023 (see appendix CCC) were that:
- Average house prices fell by -1.9% in August, the largest monthly fall since November 2022
 - Property prices dropped by -4.6% on an annual basis, from -2.5% in July. Prices were down 4.1% in London
 - The typical UK home now costs £279,569, (down by around £14,000 over the last year and back to the level seen in early 2022
 - Average prices remain around £40,000 above pre-pandemic levels
 - Southern England and Wales are seeing most downwards pressure on property prices
- 7.16 Halifax considered that house prices have remained more resilient than expected this year, despite higher interest rates, but explained that there is always a lag-effect where rate increases are concerned, and a greater impact from higher mortgage costs may now flow through to house prices. Further downward pressure on property prices was expected through to the end of the year, but on a more positive note attention was drawn to improved housing affordability.
- 7.17 In terms of residential development land the Knight Frank UK Residential Development Land Index Q2 2023 (See Appendix CCD) reported that the UK residential

⁸⁵ In July 2021 interest rates stood at only 0.1%, increasing to 0.25% in December 2021. This compares to the current rate of 5.25%

development land market had slowed over the Q2 period, with land values falling across the board. 53% of housebuilders expected land prices to also fall in Q3 2023.

- 7.18 Greenfield land values fell by an average of 6.1% in Q2 2023, while brownfield values fell by 5.9%. Prime central London saw a 5% fall over the quarter, the first quarterly decline since the pandemic-related downturn in Q2 2020. Average operating margins for the sector were forecast to fall from 20.1% in 2021-22 to 15.7% in 2022-23. However, Knight Frank also considered that if the economy improves and inflation eases, there could be a sharp rebound in land values in the longer term.
- 7.19 Knight Frank also noted that sluggish market conditions had led to greater caution towards land purchases, with deferred payment structures, conditional agreements and withdrawals all on the rise. Over 40% of housebuilders said they had been involved in a conditional land purchase in Q2, another 40% had agreed a purchase with a deferred payment structure, 25% had renegotiated a purchase and 20% said they had either withdrawn or deferred a purchase.
- 7.20 In my opinion, any current assessment of the viability of the CPO Scheme needs to take the prevailing market conditions and the impact they might have on developer sentiment and confidence into account. Therefore, while a number of the inputs into Appraisal 1, are equally valid for Appraisal 2, I have given consideration to what reasonable amendments are necessary to take into account current market conditions, construction cost inflation and any other changes which I consider to be appropriate, but and which I have not reflected in Appraisal 1.

Sales Values

- 7.21 Despite the overall national trend, Land Registry data suggests average house prices in Haringey increased slightly between July 2022 (when the FVA was agreed) and July 2023 (the latest month for which statistics are available), with an index increase from 129.0 to 132.7 (2.78%). See Appendix CCE.⁸⁶
- 7.22 The Land Registry data also suggests new build house prices in Haringey increased in the period up to May 2023 (the latest month for which statistics are available), rising from an average of £526,862 in April 2022 to £601,760 in May 2023 (14.2%), albeit the rate of growth slowed markedly at the beginning of the year and has remained relatively static since. See Appendix CCE.
- 7.23 However, the Office for Budget Responsibility (See Appendix CCF) is predicting that, nationwide, house prices will fall by 10% between Q4 2022 and 2024/2025 (a 1% larger fall than predicted in November 2022), while the number of residential property transactions will fall by 20%.⁸⁷ Low consumer confidence, the squeeze on real incomes, and the expectation of mortgage rate rises to come are expected to

⁸⁶ Land Registry House price Index for L B Haringey

⁸⁷ See paragraph 2.51 Appendix CCG

contribute to continued falls in house prices and a reduction in housing market activity thereafter.

- 7.24 At the beginning of the year Nomura predicted a 15% reduction in house prices by mid-2024, although by March 2023, Knight Frank was predicting a decline in residential values of circa 10% over 2023 and 2024, with a 4% increase in 2025 and 2026 and a 5% increase in 2027. Over the full 5-year period cumulative growth would therefore be circa 2.5%. Also in March, JLL predicted 'single digit' reductions in house prices but also noted this would not be universal, with Central London and high demand city centre locations seeing more modest price reductions or a slight increase in values. Nationally JLL expected a 6% reduction in 2023, 1% growth in 2024, 4% in 2025 and 5% in 2026-27. In July 2023, Lloyds, owner of the Halifax predicted that values would decline by 5.6% in 2023 and fall further in 2024 before rallying slightly in 2025 and 2026 to provide an average decline of -1.1% over the four year period. See Appendix CCG.
- 7.25 My overall conclusion is that the achievable average sales rate for the CPO Scheme will have improved slightly since the FVA was agreed and the £730 per sq.ft adopted in the Council's 5th October 2023 appraisal is reasonable. However, in my opinion, the assumptions made in relation to the potential future rate of growth from this figure in the 5th October 2023 appraisal are highly questionable given current market conditions and value improvement predictions over the next few years.

Construction Costs

- 7.26 RLB's original construction cost estimate was prepared in September 2021,⁸⁸ while CDM's review was undertaken prior to BNP's review of the FVA in December 2021. Between those dates and the July 2022 agreement, the BCIS General Building Cost Index indicates that build costs increased by 8.8% (See Appendix CCH). It is not clear whether account was taken of this in the July 22 agreement, but it appears that CDM's cost estimate was simply adopted without adjustment.
- 7.27 The BCIS General Building Cost Index also indicates that there is a further 3.15% forecast increase in construction costs up to the date of this proof, while a further 3.1% increase is forecast over the next 12 months and a 5.8% increase over the next two-year period.
- 7.28 It is also relevant that in December 2022 the Government proposed to mandate second staircases to improve fire safety in new residential buildings over 30 metres in height. Following consultation on the issue, in February 2023 the Mayor of London confirmed, with immediate effect, that all new buildings over 30 metres must be designed with a

⁸⁸ See Appendix 6 CD 4.33

second staircase before going to the GLA planning department for stage 2 approval and sign off. On 24 July 2023 Michael Gove confirmed in a speech that following 'confirmation from expert bodies that they support this threshold' the Government would be requiring second staircases in all new residential buildings over 18 metres in height. As a consequence, many planned new residential buildings are currently being redesigned in anticipation of the requirement becoming compulsory.

- 7.29 Although the CPO Scheme benefits from planning permission, only the first phase is detailed, and all other phases will require reserved matters approval to be obtained. The CPO Statement of Case confirms that the CPO Scheme contains a number of buildings that fall within the policy definition of tall buildings⁸⁹ – i.e. not less than 6 storeys or 18 metres high (London Plan Policy D9).
- 7.30 When agreeing the build cost for the Indicative Scheme in July 2022 (based on costings undertaken in September 2021 and December 2021), the cost consultants inputting into the appraisals are unlikely to have foreseen the need to provide second staircases for either 30 metre or 18 metre buildings and so are also unlikely to have reflected this additional cost in their estimates.
- 7.31 Moreover, neither any cost impacts arising from the Building Safety Act 2022, or the June 2023 changes to the Building Regulations are likely to have been reflected in the construction costs agreed for the Regeneration Scheme viability appraisal. If they were not reflected, this could also have an impact on the construction cost estimate for the CPO Scheme. The Future Buildings Standards set to go into consultation in 2024, ahead of their introduction in 2025 may further increase construction costs for later phases of the CPO Scheme.
- 7.32 I note that the 5 October 2023 viability appraisal for the CPO Scheme reflects increased build costs, averaging between 10-15% for most blocks. While no detailed updated construction cost estimate for the CPO Scheme has been provided to support the revised costs, subject to review of such an estimate, I have adopted the same build costs within Appraisal 2.

Site Wide Infrastructure Costs

- 7.33 The July 2022 agreement refers to site wide infrastructure costs being agreed at £74,414,082, apparently based on the result of a revised estimate provided by CDM, prior to BNP's issue of further comments on the FVA in March 2022. It is therefore also likely that the infrastructure costs will have increased from the date they were assessed, broadly in line with the BCIS rate increase referenced above.

⁸⁹ See paragraph 6.69 of the CPO Statement of Case

7.34 Although a breakdown of the agreed infrastructure costs across the different phases of the CPO Scheme was not made available, CDM's initial infrastructure estimate of £72,414,082 for the Regeneration Scheme, apportioned £32,586,336 of this total against the first 3 phases, which (with the exception of block C2) appeared to relate to the CPO Scheme.⁹⁰

7.35 However, I note that the 5th October 2023 appraisal reflects a total of £43,111,859 for infrastructure costs for the CPO Scheme, and I have adopted this figure for the purpose of Appraisal 2.

CIL/S.106/Carbon Offset

7.36 Although in Appraisal 1 I simply adopted a relative proportion of the sums adopted for CIL, s.106 costs and carbon offsetting for the Regeneration Scheme in the FVA, I note that the 5 October 2023 appraisal allocates specific sums under these headings to the CPO Scheme. Subject to seeing how these sums have been calculated, I have adopted them within Appraisal 2.

Purchase Price

7.37 As noted above, for the FVA DS2 assessed both a BLV and then applied compulsory purchase compensation costs in addition. On this basis the total cost of acquiring the land necessary for the CPO Scheme was BLV £33,792,250 + circa £4.8 million compensation costs, for a total of circa £36.8 million. I note however that the 5th October 2023 appraisal adopts a cost of £43,111,859 for the CPO Scheme, and IO have adopted this for the purpose of Appraisal 2.

Finance Costs

7.38 Although no account was taken of finance costs in the FVA, as viability was measured on the basis of IRR, it is relevant that the cost of borrowing money to deliver the CPO Scheme will have increased significantly since the time the FVA was agreed. The CPO Statement of Case confirms that the CPO Scheme is likely funded by a combination of grant funding, equity and investment partners⁹¹ - those partners being '*a range of UK and international lenders*'.⁹²

7.39 It is to be assumed that the lenders would charge interest on any funds they made available and the level of interest they would charge is likely to have increased considerably since the inputs to the FVA were agreed. In July 2022 the UK base interest rate stood at 1.25%, while at the date of this proof it now stands at 5.25%. At

⁹⁰ See Table 14 CD 4.33

⁹¹ See paragraph 7.23 of the CPO Statement of Case

⁹² See paragraph 7.28 of the CPO Statement of Case

the date the initial draft of the FVA was produced in October 2021, the base interest rate was 0.1%.

- 7.40 In line with the increase in the base rate the cost of finance for a developer seeking to fund a development like the CPO Scheme will have increased from circa 7% to circa 9-10%. Although finance costs are excluded from a development appraisal based on IRR, the increase in borrowing costs creates increased risk, so that today a developer, and any funder, is likely to require a higher IRR than at the time the FVA inputs were agreed.

Appraisal 2 Results

- 7.41 A summary of the results of Appraisal 2 is attached at Appendix CCI. It will be seen that adopting my Appraisal 2 assumptions the CPO Scheme produces a negative IRR of -1.1%, i.e. the CPO Scheme loses money and is completely unviable. While the 5th October 2023 appraisal attempts to disguise this by building in aggressive growth assumptions, this is not normal practice and there is a significant risk that the CPO Scheme will remain unviable for several years to come.
- 7.42 While I would caveat my conclusions by saying that I do not have all of the information available to me to be certain that Appraisal 2 does not require some amendment, I nonetheless consider that the IRR the appraisal produces would be unlikely to vary significantly if that information were made available to me. I assume that further explanation of the Council's 5 October 2023 appraisal will be provided when its viability evidence is submitted.
- 7.43 My conclusion is therefore that the CPO Scheme appears to be significantly unviable and does not produce a return that will meet Lendlease's target rate, or the likely Required Return provided for in the Development Agreement. There is therefore a material risk that CPO Scheme phases will not meet the pre and post Planning Viability Conditions, either requiring a Mitigation Plan to be put in place, or potentially leading to the termination of the Development Agreement for one or more phases.
- 7.44 No evidence has yet been provided by the Council or Lendlease that demonstrates my preliminary conclusions are incorrect and that the CPO Scheme is viable, or that there is any certainty that unviable phases of the development would still be progressed. The 5th of October 2023 appraisal simply demonstrates that the CPO Scheme is unviable without making bold assumptions in terms of sales value growth.
- 7.45 I note that affordable housing providing access to grant is proposed for the early phases of the development, while the development of the remainder of the CPO Scheme has been extended and the provision of infrastructure, such as Moselle Square will only be provided in later phases. This appears to reflect a recognition of the viability risk that surrounds the CPO Scheme and creates a scenario where more

time has been created in the hope that the market might improve during the life of the development. However, to achieve this more phases have been created (despite the CPO Scheme being a smaller development), which provides for a greater focus on viability under the Development Agreement and potentially provides an opportunity for Lendlease to withdraw from the development prior to providing costly, but important, infrastructure.

8. SUMMARY OF CONCLUSIONS

- 8.1 The CPO is being promoted to deliver the CPO Scheme. This is not the wider Regeneration Scheme for which planning permission has been granted, but a smaller development encompassing Plots A-G of the Regeneration Scheme, located to the south of White Hart Lane. In broad terms, the CPO Scheme is circa 57% of the size of the Regeneration Scheme.
- 8.2 The CPO Statement of Case says that the CPO Scheme will be delivered over seven phases, with work expected to start on the first phase in Q4 2023 and complete on the last phase in Q2 2034 (126 months). This is a slightly longer development period than was originally envisaged for the Regeneration Scheme, which was due to be commenced in January 2022 and completed in January 2032 (120 months).
- 8.3 The CPO Guidance makes clear that in order to justify the use of compulsory purchase powers an acquiring authority must demonstrate that the scheme for which powers are being granted is financially viable, and that funding and other resources necessary to deliver the scheme will be available within a reasonable timescale.
- 8.4 Moreover, the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme, as well as the basis on which other bodies (including private sector partners) will make financial contributions.
- 8.5 A requirement to demonstrate scheme viability to justify the use of compulsory purchase powers is also an integral part of the Council's planning policy. Policy DM56 of the Council's Development Management DPD says that the Council will only use compulsory purchase powers to support a viable, deliverable and Local Plan compliant scheme [My Emphasis].
- 8.6 In this case, having regard to both the CPO Guidance and DM56, as Lendlease's obligation to fund and deliver development under the Development Agreement is subject to achieving a target financial return, it therefore needs to be demonstrated that the target return can be achieved. Alternatively, it needs to be explained how it can be guaranteed that development will proceed if the target return is not achieved. This information has not been provided by either the Council or Lendlease to date.
- 8.7 The decision to refuse the grant of compulsory purchase powers for the Vicarage Field CPO is an example of where a failure to clearly demonstrate that a scheme of development was viable meant that the CPO Inquiry inspector could not be confident that there was a reasonable prospect that the scheme would proceed, or that the necessary resources were likely to be made available within a reasonable timescale.

This was because the Inspector concluded that no developer or investor would pursue a scheme that is not economically viable or feasible.

- 8.8 As a consequence, it was difficult to show conclusively that the compulsory acquisition of the land included in the Order was justified in the public interest, as detailed by CPO Guidance.
- 8.9 Although important parts of it have been redacted, it is clear from the Development Agreement that demonstrating viability throughout the development timetable is an important part of the decision to progress any particular phase of the CPO Scheme. Pre and post viability conditions have to be met, and if they are not, a Mitigation Plan has to be put in place; albeit it is not clear how the possible Mitigation Plan solutions suggested in the Development Agreement would make any unviable phase of development viable.
- 8.10 If a Mitigation Plan for a Phase cannot be agreed within a specific (currently unconfirmed) timetable, the Development Agreement provides that it can be terminated in relation to that Phase. It is also possible that if the CPO Scheme were considered to be unviable overall, and there was no clear prospect of it becoming viable within an acceptable time period, it could be determined in relation to all outstanding phases.
- 8.11 An FVA undertaken by DS2 on behalf of Lendlease in October 2021, amended in May 2022, assessed that the Regeneration Scheme produced an IRR of 6.6% against a target rate of 14%, a deficit of 7.4%. On the basis of this assessment the FVA concluded that the Regeneration Scheme was '*currently not viable with the anticipated planning and affordable housing liabilities.*'⁹³
- 8.12 The FVA also included a sensitivity analysis that demonstrated that the 14% IRR viability target could only be achieved if either sales values could be increased by 10%, or construction costs could be reduced by 10%. Nonetheless, the FVA confirmed that Lendlease was prepared to proceed with the scheme (delivering 35% affordable housing), '*taking a view on future growth*' and the potential to reduce build costs.⁹⁴
- 8.13 Following its publication, a number of inputs into the FVA were challenged by the Local Planning Authority's viability advisor, BNP. However, following a period of negotiation between DS2 and BNP, in a letter dated 13 July 2022, DS2 confirmed that the final agreed position was that the wider Regeneration Scheme produced an IRR of 11.62%; a deficit of 1.38% on a revised benchmark IRR rate of 13%. I am not aware of this agreed appraisal ever being published.

⁹³ See paragraph 1.11.1.6 CD 4.33

⁹⁴ See paragraphs 1.10.2.1 and 1.10.2.2 CD 4.33

- 8.14 The CPO Scheme is not however the same as the Regeneration Scheme and for the purpose of determining whether powers of compulsory purchase should be granted, the viability of the CPO Scheme needs to be considered in isolation. I have therefore undertaken two appraisals of the CPO Scheme.
- 8.15 The first appraisal (Appraisal 1) largely adopts the inputs used for the Regeneration Scheme but reflecting the revised phasing programme for the CPO Scheme, and making a number of assumptions about what might (or should have) been reflected in the unpublished agreed FVA. The second appraisal (Appraisal 2) in contrast takes account of changes in market conditions since the inputs into the FVA were assessed and agreed, and the impacts they might have on sales values, construction and infrastructure costs and the rate of return a developer might now seek. Appraisal 2 also incorporates a number of inputs included in a viability appraisal of the CPO Scheme produced by the Council on 5 October 2023.
- 8.16 Appraisal 1 produces an IRR of 4.88%, while Appraisal 2 produces an IRR of -1.1%, significantly below the 13% target return agreed for the FVA, even before consideration is given to the fact that in current market conditions a higher IRR is likely to be sought for the CPO Scheme.
- 8.17 Although the Council issued a viability appraisal for the CPO Scheme for the first time on 5 October 2023, due to its late production I have had insufficient time to analyse it in detail. Moreover, it would be premature for me to provide a detailed opinion on the appraisal until I have seen the Council's viability evidence in full.
- 8.18 However, my initial impression is that the aggressive sales value growth assumed in the appraisal appears difficult to justify. While the FVA produced an IRR in the order of 11.6% (below the required rate of return) without reflecting growth, the 5 October 2023 appraisal produces a similar IRR assuming very ambitious sales value growth. It is clear therefore that the Council and Lendlease recognise that the viability of the CPO Scheme has declined since the FVA was agreed.
- 8.19 Any failure to meet the ambitious sales value growth assumed in the 5 October 2023 appraisal would result in a reduction in IRR and increase the deficit from the Required Rate of Return set out in the Development Agreement.
- 8.20 This creates the very real risk that if the CPO Scheme cannot be made viable in terms of providing the Required Rate of Return, Lendlease will terminate the Development Agreement in relation to one or more of its seven phases. This is a potential impediment to the delivery of the CPO Scheme which the Inspector may wish to take into account when deciding whether to confirm powers of compulsory acquisition.

9. STATEMENT OF TRUTH AND DECLARATION

Statement of Truth

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

9.2 Declaration

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

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

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

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

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

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



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Colin Michael David Cottage

BSc (Hons) MRICS

10 October 2023