High Road West "Phase A" CPO Inquiry

THFC's CLOSING Submissions

Introduction

1. *THFC has already invested over £1bn in the area through its world-class stadium and many other projects. It is responsible for creating thousands of new jobs and adding literally hundreds of millions of pounds GVA a year to the local economy. The Club's significance to this part of the Borough, and the Borough itself, and beyond, is immense. THFC is the party which has actually delivered impressive regeneration here. We are the ones who have delivered.* We are the only party that has actually delivered any part of the NT5 allocation having developed Rivers Apartments & the Brook House School on the northern part of the allocation. And as Mr Serra explained, the Club is working towards building out its planning permissions on the Goods Yard & Depot site north of WHL.
2. *There have been periods since the 2011 riots where THFC and the Council have worked successfully in partnership to the betterment of North Tottenham. By way of example, the Council facilitated the delivery of the new stadium with a CPO. The partnership was ended by the Council in December 2015. It is with great regret that we find ourselves on the opposite side to the Council at this inquiry. We are extremely frustrated to be in this position as these last 8 years would have been better spent working together to continue the actual delivery of regeneration.* If Lendlease and the Council had honoured the requirement in the DA to establish a Major Landowners Group, including THFC (32.1 and 32.2 of the DA, CD 5.16) and convened the regular meetings set out in the relevant provisions over the last 6 years, then perhaps it wouldn't have come to this.
3. The inquiry has heard a lot about Lendlease's track record elsewhere but the plain fact of the matter is that the last venture between the Council and Lendlease, the Haringey Development Vehicle, collapsed, and some 6 years on from the HRW Development Agreement, Lendlease have achieved remarkably little, if anything, here. Certainly to date nothing has been delivered at HRW by them. Even plot A which benefits from a full planning permission has only been part cleared. The sooner this latest ill-starred

venture between the Council and Lendlease is put out of its misery by not confirming the CPO the better. THFC looks forward to working with the Council to continue the Club's phenomenally successful track record of actual delivery in the local area after what can only be considered to be the unfortunate hiatus of the Lendlease years.

4. In closing we reiterate the fundamental concerns that we raised in opening and have stressed throughout the Inquiry. The evidence presented at the Inquiry has substantiated these concerns.

<u>The right test</u>

5. *Planning permission ("the overall permission") has been given for a comprehensive redevelopment both to the north and to the south of White Hart Lane, west of High Road. The CPO relates only to the part of the overall site which lies to the south of WHL. There isn't a freestanding planning permission for this area, nor were the merits of redeveloping only to the south of WHL considered by the Council when it decided to grant the planning permission. The test in relation to the planning determination was that found in s.38(6) of the Planning And Compulsory Purchase Act 2004.*
6. *At this inquiry the test is of course completely different, and far more onerous, namely whether there is a compelling case in the public interest to confirm the CPO, relating as it does simply to the land to the south of WHL.*
7. The AA has drawn attention to the Judge's observations in the Club's JR of the planning permission (in particular the last two sentences in paragraph 27: CD 5.17) concerning the scale of public benefits. However these comments were made by the Judge in the context of the Club's challenge to the legality of the Council's decision to grant the planning permission and were made about the entire consent, north and south of WHL. The Judge did not have before him the CPO scheme which relates only to the land south of WHL and nor was it any part of that case to consider the test in the CPO Circular.
8. As for that test, it is for the Council as AA to demonstrate that there is a compelling case in the public interest. If you agree with us that the AA has failed to make good its case then that should be the end of the matter.

9. When Lendlease applied for the overall planning permission, the southern part of which underpins the CPO, the Club repeatedly contended in its objections to the application that the permission sought (which was subsequently granted) was far too broad and "flexible" to allow a meaningful picture to be assembled of what would actually be built out[1].
10. This problem has manifested itself at the CPO inquiry. In order to consider whether there is a compelling case in the public interest one needs to understand what the CPO if confirmed would facilitate by way of redevelopment. THFC's answer is that the only aspect of the permission which can be relied upon and given weight in making the decision whether to confirm the CPO is whatever is *guaranteed* to be delivered under the terms of the permission and the associated s106 planning obligation.
11. These are the minimum amounts of types [land use] of floorspace secured by condition 86 of the permission[2]. But of course these relate to the development both north and south of WHL. In terms of minima secured *south of WHL* one has only Table 4 (Zones 1 – 6) in the Development Specification[3] which is written into the planning permission by virtue of conditions 2(a) and 40(b).
12. The s106 planning obligation, which was varied during the course of the CPO inquiry deals with the timing of provision of social infrastructure, most pertinently for present purposes the Library / Learning Centre, and Moselle Square.
13. We return to the minima and the timing issues later in these submissions.
14. The key point at this stage in our submissions is that neither the illustrative scheme nor the maxima should be relied upon or given weight in deciding whether to confirm the CPO. This is because the illustrative scheme has no legal status in the planning permission (it is simply an illustration of how the permission could be built out at a point somewhere between its minima and maxima). The obvious difficulty with relying upon it and giving it weight in terms of considering whether there is a compelling case in the public interest is that there is no evidential basis upon which it can be concluded that the illustrative scheme would be built were the CPO to be confirmed.

[1] See for example, CD4.12, p7
[2] CD4.28, pdf page 32
[3] CD 4.04, page 18

15. The same point applies to the maxima referred to in condition 86 of the permission – there is no evidential basis upon which it can be concluded that the maxima would be built out. Indeed there is an added complication in that the table in the Development Specification (Table 5, see zones 1 – 6[4]) which relates these maxima to the land south of WHL does so in a manner that cannot be added together as they would exceed the overall cap in condition 86. Thus the LLC and the Cinema and the Pub each appear multiple times in the schedule.
16. In short, if the (so to speak) minimum scheme secured by the planning permission south of WHL doesn't give rise to a compelling case in the public interest to CPO land in order to facilitate it then that's the end of the matter.
17. A similar point arises in relation to the timing of provision of social infrastructure south of WHL namely Moselle Square and the Library / Learning Centre. The claim made by the AA and Lendlease is that these would be provided "early" / "very early". The way of testing these claims is to examine them in light of the provisions of the s106 planning obligation.
18. With regards Moselle Square, the square is contained in Phase "5" Plot E of the most recent phasing plan[5]. Using Mr Levine's viability appraisal, there would be 1,008[6] (affordable and market) homes in the earlier phases. Whilst this is the current phasing plan, under the s106 planning obligation[7] the requirement to provide the square would not arise until the *occupation* of 780 *market* units, which would not be reached until the <u>last</u> phase ("7" Plot F) as until then the *market* units in earlier phases (i.e. 380 + 52 + 30 = 462) would be nowhere near the trigger. The last phase is shown in Mr Levine's appraisal as containing 450 market units[8]. The 780 trigger would occur at the 318th unit of the 450 in the last phase (462 + 318 = 780). So rather than being delivered early let alone very early, the legal obligation to provide the square is late, towards the end, of the development.

[4] CD 4.04, page 19
[5] CD 11.11
[6] 61 + 380 + 165 + 350 + 52, taken from CD 11.17, pdf page 6
[7] CD 4.29 Sch. 13 at 2.3, 2.4 page 143. We have quoted the earlier of the two triggers.
[8] In CD 11.17, pdf page 6 this is labelled as Phase 4, under the updated phasing plan CD 11.11, this is the final phase

19. The position is even worse for the Library / Learning Centre. The updated phasing plan shows that the current library will be demolished in Phase 4 (Plot C2). In the revised indicative timings[9] demolition is shown to occur in Q1 2027. Under the terms of the recently varied s.106 planning obligation the requirement to provide the new library would not arise until the *occupation* of 95% of the market housing to the south of WHL[10]. Delivery of 95% of the market housing would occur in the final phase of development on the order land (Phase "7" Plot F). Mr Levine's appraisal shows 450 market units in this phase and 462 in the earlier phases, a total of 912 market units. Accordingly, the 95% trigger would arise at the 866th unit or put another way at the 404th unit of the 450 in the last phase (462 + 404 = 866). In other words, close to the very end of the development. On the indicative timings this would probably be Q4 2033 getting on for 7 years after the demolition of the existing library. Far from being early / very early the legal obligation would provide the library very late if at all.
20. To compound matters, there is nothing to guarantee that the new library would be any bigger than the current library. Condition 86 of the planning permission secures a minimum floorspace of 500sqm GEA, which is the same as the existing library.

<u>Fundamental concern No. 1 – the CPO scheme is not a comprehensive redevelopment</u>

21. *The development plan via Policy AAP1 and Allocation NT5 of the Tottenham AAP aims to ensure the comprehensive redevelopment of the land west of High Road north and south of WHL. THFC has obtained various planning permissions on its sites to the north of WHL (e.g. on the Depot, and Goods Yard) which have been incorporated into Lend Lease's overall planning permission, and delivered a major development – effectively the first phase of HRW - at Canon Road (the northern part of the Allocation).*
22. The constituent elements of the overall permission on both sides of WHL are inextricably linked, e.g. with *the* key[11] public open space for *the entire* redevelopment,

[9] CD 11.31
[10] CD 11.33 Clause 6 on page 2. "Phase A" is defined in the s.106, CD 4.29, on page 5 by reference to Plan 3 of Schedule 1 as being the land south of WHL
[11] As reported in the Officer Report for the Planning Permission, CD4.9, pdf page 76, the QRP Commented: "*The delivery of Peacock Park will be crucial to the success of the scheme as a whole. At the previous review, the panel asked the applicant to demonstrate how delivery of Peacock Park early in the process can be achieved, as this is pivotal to decision-making about the number of homes, and quality of life.*"

Peacock Park[12], located north of WHL. (There also being an identified deficiency in open space[13] in the existing area.) This is not simply a matter of phasing as the Council sought to suggest in cross-examination of Ms. Camburn. It would be bad planning of the first order to facilitate via confirming the CPO the delivery of some 1488 homes (which is the number accounted for in Mr Levine's appraisal) south of WHL without the delivery of the key public open space for the residents of these homes being secured. The planning permission for the Club's Goods Yard / Depot site makes provision for the delivery of about 1/3rd of Peacock Park but in order to deliver the rest of the Park, the remaining 2/3rds, Lendlease would need to acquire land north of WHL. Some 6 years on from the Development Agreement, Lendlease have not acquired any of the land required and the Council has not included it in the CPO.

23. As is known, the Club owns some 70% of the land north of WHL and via the permissions it has obtained can facilitate the delivery of a considerable amount of redevelopment north of WHL but in order to achieve an overall comprehensive development as sought by the development plan, the Council should have included the remaining (i.e. that not owned by THFC) land north of WHL in the CPO. It is hard to fathom why this wasn't the course taken unless the very obvious issues concerning viability are the explanation given that Lendlease will get none of the return from the Club's redevelopment of its sites. Be that as it may, the problem which arises is that the redevelopment which would be facilitated by this CPO *does not constitute the comprehensive redevelopment envisaged in the development plan.*
24. The (eventual) delivery of Moselle Square would not address this issue as it is a very different form of public amenity.
25. Another problem which arises from the CPO not facilitating a comprehensive redevelopment on both sides of WHL is that there would not be a single stage decant of those existing residents on the estate who would wish to continue to live here. Mary Powell has highlighted the practical and human issues of this.

[12] The importance of Peacock Gardens/Park is highlighted throughout the HRWMF. See in particular, CD3.6, p17
[13] CD 3.4 London Borough of Haringey Local Plan – Strategic Policies 2013 (with alterations 2017), Figure 6.4, page 128

26. Confirming the CPO would, in the language of Policy DM55 of the Development Management DPD, "frustrate the delivery of the site allocation … outcomes sought" as Allocation NT5 seeks comprehensive development on both sides of WHL.[14]

Fundamental concern No. 2 – the CPO scheme would not create a new leisure destination for London

27. *10 years ago at the Stadium CPO inquiry the Council's Director of Place explained in evidence the Council's strategy that there should be a new leisure quarter to the west of High Road immediately opposite (i.e. to the south of WHL) and complementary to the new stadium. This is because of the imperative that regeneration to the west of High Road needs to be about a great deal more than new housing in order to respond to the recommendations of the Mayor of London's Independent Panel's report "It Took Another Riot."*[15]
28. *Unsurprisingly, this ambition was subsequently enshrined by the Council in the Tottenham AAP as "a new leisure destination for London" and in similar terms in the HRW Masterplan Framework*[16] *in both cases for the land south of WHL and west of High Road. The requirement is unambiguous* as Mr O'Brien rightly agreed, and doesn't need elaboration.
29. *Once the combined effect of the conditions in the overall planning permission, the s.106 and the Development Agreement are properly understood, the simple fact of the matter is that the part scheme which underpins the CPO would not deliver the long sought-after new leisure quarter.*
30. As Mr O'Brien also rightly agreed it is clear from the relevant parts of the TAAP[17] and the HRWMF,[18] which is referred to specifically on page 104 of the TAAP, that:
    - The new leisure destination for London is to be south of WHL

[14] CD 3.7 page 86 and paras 7.34 page 86 & 7.36 page 87
[15] CD5.13 The Club commends this report in full to the Inspector. Critical recommendations 2 and 9 are of particular significance with number 9 stating: "Tottenham needs more fun - Tottenham lacks recreational pursuits, especially for the young. The council should encourage private operators to open facilities such as cinemas, music venues or a theatre…"
[16] CD 3.6 for example p11, p87, p92
[17] e.g. 5.125 page 102, 5.126 p.103, 5.127, 5.128 p.104 and see also pages 104, 105
[18] see e.g. HRWMF page 87, 3.1 p.88, and the Figure on p.89, 3.2 p.90 and the Figure on p.91, 3.3. p.92, p.94, 3.7 p.110 and the Figure on p.111 and 3.10 p. 118 & the Figure on p.119

- West of High Road
- Opposite the Stadium
- Is not co-extensive with the Stadium
- And is to comprise built floorspace, not simply the square.

31. Whatever the development south of WHL is, it is not the above.
32. In terms of the planning permission the minima expressed in Table 4 of the Development Specification[19] for zones 1 - 6 (i.e. south of WHL) for non-residential uses amount to a total of 2,150 sqm GEA not of leisure floorspace but rather of "Commercial, Retail, Leisure and Medical." In other words there could be literally no leisure floorspace south of WHL. But even if all of it was leisure floorspace this would patently not create a new leisure destination for London. Nor do the minima for the entire permission (i.e. north and south of WHL) change the position as all that condition 86 requires is 500 sqm indoor sports (there is also 500 sqm for the library and 500 sqm for a community hall). There is no ability for the Council to require Lendlease to seek to deliver anything above these minima at the reserved matters stage. And although the s106 planning obligation provides triggers for the provision of the library and the square (as discussed earlier) unsurprisingly given the way the minima are expressed in the permission, there are no requirements in the s106 planning obligation which relate to leisure floorspace.
33. When compared to the existing non-residential floorspace on the site[20] there could easily be *less* such floorspace under the permission than currently exists even though there would be many more people living here.
34. The illustrative masterplan has no legal status in the permission but even it falls woefully short of creating a new leisure destination for London. The claim made by Mr Horne that 27% of the ground floor of the illustrative scheme comprises "leisure type uses" (sic) was rather wide of the mark – as CD 11.21 shows the leisure element is in fact a paltry 1.93% the library 1.43% and retail 23.08%.
35. As Mr Serra explained the Club has made its vast investments in the area relying on the development plan and the HRWMF that the new stadium would be the catalyst for

[19] CD 4.04, p.18
[20] See Table 1a in the Development Specification page 12, CD 4.04

the delivery of a new leisure destination for London, a new leisure quarter, across the High Road from the stadium. This matters because the Club has been a huge part of the local community and economy for generations and intends to remain so for many more generations – it does not want to see its massive investment squandered, it does not want to see another failure to do what is needed to address the long-standing problems of the area. The likes of Lendlease will come and go. The Club is deeply embedded here.

36. *The Club has demonstrated in its Alternative Masterplan how the new leisure quarter could be incorporated exactly where planning policy wishes it to be.* The Club's point that the CPO scheme would not deliver a new leisure destination for London of course does not depend upon its Alternative Masterplan. Nor do any of its other fundamental concerns about the CPO scheme. THFC's alternative would also require land assembly and is not being advanced under the 3rd factor in paragraph 106 of the CPO Circular.
37. It is true that THFC has not progressed its alternative to the stage of pre-app discussions with the Council as LPA but with respect that rather misses the point. The Club has gone to the lengths it has including securing a major operator for a multi-use theatre venue, in order to demonstrate that it is entirely possible to incorporate a major facility on the land in question so as to create a new leisure destination for London. In other words, there is no good reason why we collectively should have to accept a development south of WHL which would not achieve what the development plan, and the HRWMF, requires.
38. As for the delay which would result through taking the Club's proposition through the planning process, well the much larger Lendlease proposal which is the subject of the overall planning permission sped through the planning process – where there is a will there is a way – and THFC has a superb track record in land assembly (ultimately only needing a CPO for one parcel of land in order to deliver the new stadium, the Club itself having acquired 72 properties). Time would be saved by the very fact that THFC has already got an operator on board for the venue. But most importantly, there is a much greater imperative to get the scheme right than there is in proceeding with a sub-optimal scheme.
39. Finally, Lucas Laurence's criticisms of the alternative were a pointless exercise. Take for example the idea of locating the library in the Grange. If in due course this was not

considered to be appropriate then as Ms Camburn explained the library could be provided south of WHL. In any case as she pointed out, Plot E in the Alternative Masterplan is already shown as providing space for learning facilities[21].

40. Returning to the CPO scheme, the plain fact of the matter is that under the terms of the planning permission the development south of WHL would be an extremely poor fit with local planning policy both in terms of the failure to deliver a new leisure destination for London (the Club's 2nd fundamental concern) and by virtue of the CPO scheme not being comprehensive (the Club's 1st fundamental concern).

Fundamental concern No. 3 – the Viability of the CPO scheme has not been demonstrated

41. The reason why one considers viability in CPO cases is in order to assess whether, in the language of the 4th factor in paragraph 106 of the Circular, "there is a reasonable prospect that the scheme will proceed." In the case in hand, whether what are currently phases 4, 6, 7 i.e. C2, G, F which together contain most of the market housing (532 units on Mr Levine's appraisal) i.e. the "Subsequent Phases"[22] will proceed will turn upon the terms of the DA between the Council & Lendlease, which in turn will depend upon what we have dubbed capital V "Viability" as that is a defined term in the DA. The striking thing in this case is that whereas you have evidence concerning "viability" in a general sense (lower case "v" "viability") as to which more later in these submissions, there is no evidence whatever, literally none, to demonstrate that the scheme is likely to be "Viable" within the terms of the DA. Given this, there is no evidential basis upon which the conclusion can be drawn that there is a reasonable prospect the scheme will proceed *applying the terms of the DA - which in the real world will be determinative.* In these circumstances it is our submission that it is not open to the inspector to conclude that it has been demonstrated there is a reasonable prospect that the scheme will proceed.

[21] CD 7.3 Alternative Masterplan Summary, page 6
[22] CD 5.16, p35

42. Under the DA "Viable" and "Viability"[23] are defined by reference to the "Required Return"[24]. The Required Return [the "RR"] has not been disclosed to the Inquiry and so it is impossible to judge whether it is likely to be met.

43. Two witnesses who gave evidence to the inquiry, namely Ms Mason and (as now clarified) Mr O'Brien, know what the "RR" is but neither gave any evidence to confirm that the IRR in Mr Levine's appraisal would meet the definition in the DA. Quite apart from the fact that we do not even know whether the "RR" is expressed in terms of an IRR, there is an even bigger problem here. Mr Levine has done two appraisals, one of the CPO scheme and the other of the entire permitted scheme. He has not done an appraisal of each of the Subsequent Phases. But the DA works on the basis that upon each occasion when Viability is to be assessed this is for both the entire scheme north and south of WHL and for the phase in question.[25] Given that Mr Levine has not carried out an appraisal of the relevant phases, even had Ms Mason or Mr O'Brien been more forthcoming, neither could actually have helped in any event.

44. This is a mess of the AA's making as there are ways in which the desire to keep the RR confidential could have been addressed while still enabling evidence to be given on the issue:

    a. As suggested by Mr Levine in cross-examination, he could have been provided with the RR under a non-disclosure agreement; or,

    b. A data room could have been created and the respective experts provided with the necessary information via that data room, again governed by non-disclosure agreements; or,

    c. A separate independent expert could have been instructed and provided with the Required Return under a non-disclosure agreement, and asked to confirm to the Inquiry whether it was achieved (as was explained in the Vicarage Fields[26] decision).

[23] CD5.16, p37
[24] CD5.16, p32
[25] The DA under the definitions of "Pre Planning Viability Condition" and "Post Planning Viability Condition" on page 29 requires Viability to be demonstrated against the whole development (that on the land south AND north of White Hart Lane covered by planning permission HGY-2021-3175) and on all Subsequent Phases which include market housing.
[26] CD 5.18, para 145

45. None of these ways of dealing with the issue have been utilised nor even thought about by the AA / Lendlease.

46. Not only has Mr Levine not appraised the relevant phases but to compound matters there is another stumbling block in the DA namely that in relation to the whole development (north and south of WHL) what the DA requires is that the viability appraisal shows that "the Partner" i.e. Lendlease[27] "achieves" the RR for the "overall Development" that is the whole of the development covered by the planning permission[28]. But of course that is impossible as most of the land north of WHL (some 70%) is the Club's and on Mr Levine's appraisal only 204 market units [22.4%] out of the total of 912 are on plots which are not owned by THFC. This means that the lion's share of the return will not be Lendlease's but rather Spurs'. For example, although Mr Levine's appraisal of the whole development north and south of WHL originally came in at 14.23% IRR, which he has now reduced to 12.47% IRR, over 3/4s of the return would be Spurs' not Lendlease's.

47. Given that at each stage when Viability is to be assessed under the DA both the Subsequent Phase and the overall Development (north and south of WHL) have to be shown to achieve the RR, it can be seen that in the real world that is to say, applying the terms of the DA which will actually govern whether the scheme will proceed, the fact that the Club has most of the land and the value north of WHL creates a fundamental stumbling block.

48. Issues like these would not be overcome via the mitigation process contained in the DA. The Pre Planning Appraisal and Post Planning Appraisal (of Viability) are reviewed by the Steering Group[29]. If the Steering Group do not agree that these show that the Viability definition is met, then the matter is referred to the Expert for determination under Clause 33[30]. The Steering Group is made up of 3 people from the Council and 3 people from Lendlease. Each bloc has 1 vote and no one has a casting vote[31] so inevitably if Lendlease consider there is a Viability problem then it will be referred to the Expert. In such a scenario, what the Expert would be determining is whether the

[27] See the definition of "Viability", CD5.16, p37
[28] CD4.28, Planning Permission HGY-2021-3175
[29] CD5.16, p46, Clause 8.2.3
[30] CD5.16, p46, Clause 8.2.4
[31] CD5.16, Clause 31.8

Viability definition is met[32]. If the Expert concludes that the phase or overall Development is not Viable then it becomes a Mitigation Matter[33] and a Mitigation Plan[34] is required.

49. When creating a Mitigation Plan to seek to overcome a Mitigation Matter, i.e. a lack of Viability, the obligation on Lendlease is to use "reasonable endeavours"[35] NOT "all reasonable endeavours". This is a crucial difference. When using "reasonable endeavours" Lendlease are not required to act against their commercial interests and so there is no obligation on them to agree to a reduction in the Required Return or to do anything at all which would be against their best commercial interests, such as waiving Phase Conditions.[36] (See the High Court's exposition in *Brooke Homes (Bicester) limited v Portfolio Property Partners Limited and others* [2021] EWHC 3015 (Ch) at paragraph 97. CASE REPORT ATTACHED.)
50. If the Steering Group cannot agree that the Mitigation Plan "resolve[s]"[37] the problem – in straightforward language if the plan has not made what otherwise would not be Viable, Viable - then the matter again goes to an Expert[38] to be determined in accordance with Clause 33. Contrary to Ms Mason's misunderstanding of the position, the Expert does not have the task, role or ability under the DA to rework the Mitigation Plan or to force Lendlease to accept something which is against their commercial interests. The Expert will determine simply whether with the Mitigation Plan the phase and / or the overall Development meets the test of Viability. Take an easy example, if Lendlease has decided not to accept a reduced return, the Expert cannot oblige them to do so. This it has to be said is hardly surprising.
51. If having been through the mitigation process the Viability issue has not been resolved (i.e. such that what was not Viable has been made Viable) then under clause 37.3.1 of the DA[39] Lendlease can terminate the relevant phase.

[32] CD5.16, p67, Clause 33.3.1
[33] CD5.16, p20
[34] CD5.16, p21
[35] CD5.16, Clause 34.4
[36] To give two examples from the list in the definition of "Mitigation Plan" found on page 21 of the DA
[37] Clause 34.6 page 69 of the DA
[38] CD5.16, Clause 34.6
[39] CD5.16, p71

Small "v" "viability

52. Our case is that whether there is a reasonable prospect of the scheme proceeding should be judged applying the DA for the simple reason that in the real world the terms of the DA will determine the issue, rather than a more generic appraisal of viability which does not apply terms of the DA. Most strikingly, under the DA the one thing which is literally irrelevant is whether the development on the CPO lands is in its own right Viable. That's because as we have seen the DA will look to the Viability of the phase in question, and the entire development north and south of WHL.
53. Having put that marker down, even were one to assess the viability of the CPO scheme in a more generalised manner, the evidence shows that at best the scheme is teetering on the brink in terms of viability, and with any one or a number of small adjustments would undoubtedly not be viable.
54. Mr Levine's revised appraisal is at 10.4% IRR. He explained that this is "at the lower end of a reasonable range". He refused to say what %IRR would mark the lower and upper limits of the range he must have had in mind in order to say what he said. However, he referred several times to 10 – 15% and it seems fair to infer that this is the range he must have had in mind (as Mr Cottage explained he would) not least because Mr Levine volunteered that 9% IRR "is probably below the range."
55. So even at 10.4% IRR the CPO scheme is marginal or borderline.
56. Only two points of disagreement remain between Mr Levine and Mr Cottage, namely whether the agreed 5.25% annual sales value growth should as per Mr Levine be applied from now or as per Mr Cottage from the beginning of 2025, and secondly whether construction cost inflation should be 3% (Levine) or 3.25% (Cottage) p.a.
57. In our submission, it would be entirely reasonable to proceed on the basis that the market will be flat in 2024 in terms of growth in sales value, and also to apply the higher construction cost inflation percentage as this is such a good fit with the range of forecasts which are available, and certainly a much better fit than the lower figure is.
58. Depending on which of these points, or whether both of them, is applied to the appraisal and in relation to sales value growth, quite how one works the point through, in all permutations the IRR would fall below 10%.
59. Thus:

a. 10.43% - 2.2% = **8.23%**, based on no sales value growth in the first year [2024] and an average of 5.25% per annum for the remaining 9 years of build out; or,
b. 10.43% - 0.5% = **9.93%**, based on no sales value growth in the first year and 5.85% growth per annum for the remaining 9 years giving an average growth of 5.25% over the 10 years; or,
c. 10.43% - 0.78% = **9.65%**, based on a 3.25% p.a. build cost inflation;
d. 10.43% - 2.2% - 0.78% = **7.45%**, based on scenarios (a) and (c) occurring (this is an approximation as explained by CC); or,
e. 10.43% - 0.5% - 0.78% = **9.15%**, based on scenarios (b) and (c) occurring (this is an approximation as explained by CC).

60. Even were one simply to apply Mr Cottage's points as sensitivity tests one can see just how fragile the viability of the CPO scheme is. This is not a case in which it can be said with any confidence at all that the scheme is likely to be viable and thus that there is a reasonable prospect that it will proceed (remembering all the time that these submissions are not the primary way in which we put our case, as you know we say that in reality "Viable" as defined in the DA will govern this issue). And for all Ms Mason's assurances that Mr Levine's original appraisal (which was at 11.59% IRR rather than the now lower 10.4%) was within what Lendlease would anticipate, her evidence must be tempered by the fact that as she confirmed in cross-examination others in Lendlease will make this decision – it won't fall within her remit to do so (she won't for example be one of Lendlease's three members of the Steering Group) – and any decisions by Lendlease would look across the board at its range of projects on a comparative basis (basically, would Lendlease's money be better spent elsewhere in this country or Europe and potentially globally than on a borderline scheme here). In addition, any external funders would have their own parameters which Ms Mason cannot speak to.
61. *Our very real concern is that land having been taken from its owners by compulsion, Lendlease will walk away part way through, if not well before.* As discussed, under the DA the Subsequent Phases (i.e. the bulk of the market homes) are especially vulnerable to being abandoned for lack of Viability. Were the development to grind to a halt in this way then to compound matters as the triggers in the s106 planning obligation for the provision of the LLC and Moselle Square would not have been

reached[40], or anywhere near reached, one could well end up with (on Mr Levine's appraisal) 576 affordable homes and 380[41] market homes, a total of 956 homes without the LLC or the square.

62. The very real risk is of failure which would *blight the area for another generation or more. We really don't want history and the words of It Took Another Riot that "Previous attempts to regenerate Tottenham have failed" to repeat themselves.*

Fundamental concern No. 4 – Crowd safety

63. *It should come as no surprise that this is an issue of existential significance to THFC.*
64. In Opening we expressed the hope that assurances would be given to the Club which would resolve this concern. Of the two issues, namely (1) the practical (or "technical") points concerning matters such as queue lengths and widths, and (2) the terms of an Access Licence / easement, there is now an agreed position with regards the 1st of these[42] and the expectation is that these assurances will work their way through into the details to be submitted to the LPA under condition 64 of the planning permission.
65. However welcome this progress is, it will be meaningless unless the Club is given access to the square and other parts of the CPO scheme in order to put in place all the practical arrangements necessary to manage crowd flows. Thus an agreement that a queue should be "x" metres long and "y" metres wide etc. etc. won't get us anywhere if we don't have access to the land in question. That access will depend upon the grant of an Access Licence under the terms of the s.106 planning obligation.
66. In our open correspondence[43] we had sought assurances concerning the terms of the licence. Although there have been a number of helpful indications given to us in open correspondence in response by Lendlease, two major issues remain upon which, as we make these submissions, Lendlease won't budge.
67. These were explained by Mr Serra and are (1) the length of time the Club requires access for in relation to NFL games, and (2) arrangements should the Club be allowed via the planning process to hold more events at the Stadium than currently permitted.

[40] As explained in para 15-17
[41] [912 – 532 = 380]
[42] CD 11.38
[43] Letter dated 31st October 2023 see Mr Ancliffe's Rebuttal Appendix B

68. In relation to the first of these, the Club needs a considerably longer period for NFL games than it does for other events. Unfortunately, the definition of "Duration of Access per Event" in the s106 planning obligation[44] does not allow for anything like the time we need to cater for NFL games. As things currently stand, Lendlease has not indicated any willingness to address this point. The relevance of that to your decision on the CPO is addressed below.
69. In relation to the second of these, as is known, the Club aspires to being able to host more events at the Stadium than its planning permission currently permits. (Indeed, to date it has obtained consent from the Council via the planning process for additional events as circumstances have arisen e.g. to put on an additional Beyonce concert due to the phenomenal demand.) As things currently stand, Lendlease has not indicated any willingness to address this point either.
70. How does any of this bear upon the decision whether to confirm the CPO? The position is straightforward – as things currently stand i.e. without the CPO scheme in place, the Club has a well-established system for managing crowd flows for all events held at the stadium including NFL games, and this system would simply continue to be applied (absent the CPO scheme) should the Club be allowed via the planning process to host more events at the stadium. Under the current way of doing things, the Club is not beholden to a commercial entity such as Lendlease for the ability to manage crowds and does not have to pay a fee to Lendlease (or any commercial entity) for the access it needs in order to manage its crowds.
71. However, unless Lendlease gives the Club the assurances it seeks with regards NFL games and additional events, if the CPO is confirmed this will facilitate Lendlease, a commercial entity, in holding THFC to ransom for the fee (the "premium" to quote TMKC) it will wish to extract for NFL games, and additional events. This is in the context that in a world without the CPO scheme, the Club will not face any of these problems.
72. This isn't simply a "commercial" point. You, the inspector, will have given Lendlease the whip hand by confirming the CPO. You shouldn't allow this to happen for two powerful reasons. First, it is wrong as a matter of first principles for the CPO system to be used or abused so as to place one commercial entity in an overbearing position

[44]CD5.16, Annex to Schedule 13, bottom of page 147

over another. A CPO provides for the compulsory acquisition of land, for which the party in question receives compensation set at market value. Unless Lendlease give the assurances we seek on access, this CPO would also gift Lendlease an unfair bargaining position over the Club with no compensation. Secondly, the Club is by far and away the most important private sector contributor to the economic and social wellbeing of the area, indeed the Borough as a whole and by way of example as Mr Serra explained, NFL games bring in huge amounts of money to the local economy, even more than football games or other non-football events. By confirming the CPO you will jeopardise the Club's ability to continue to contribute as much as it does (the NFL games point) and its ability to contribute even more (the additional events point).

73. CPO's are all about the greater public good, they are not there to give a commercial entity like Lendlease the ability to hold the most important business in the area to ransom (for a "premium").

74. There is a third point. As Mr Serra explained, the Club needs an access arrangement which would run with the land (an easement). As things currently stand the risk is that should Lendlease drop out of the equation, any licence granted by them would literally not be worth the paper it is written on. The Club understands that Lendlease sees the point and is amenable to the grant of an easement, which would need to include the Council as a party, as landowner. The problem here is not Lendlease but rather the Council which has refused to engage with the Club to progress this issue. The Club raised this in its open correspondence in which it sought assurances on the legal / non-technical matters[45]. As things stand, the AA has not addressed the point and so once again we find ourselves in the position that whereas in the world without the CPO scheme, the Club does not face these problems, should you facilitate the CPO scheme by confirming the CPO, the Club would have these problems imposed upon it.

75. Plainly all of these residual but critically important issues could be addressed by Lendlease, and the AA – all they need to do is to give the assurances the Club perfectly reasonably seeks. It isn't too late even now. But if the assurances have not been given by the time you come to make your decision then we urge you not to facilitate the

[45] Letter dated 31st October 2023 see Mr Ancliffe's Rebuttal Appendix B

imposition of a burden on the Club which it does not face in the world without the CPO scheme, and thus you should not confirm the CPO.

In overall conclusion

76. The first, second and third of the Club's fundamental concerns have been substantiated at the inquiry – the CPO scheme is not a comprehensive development, it would not create a new leisure destination for London and it has not been shown to be Viable applying the terms of the DA (or even viable in a generic sense). The fourth of our fundamental concerns – crowd safety – has been addressed in part but unfortunately there remain very real problems which arise from Lendlease playing hardball with the Club and exploiting its position as the AA's development partner with regards the CPO, and through the AA's failure to engage with the Club.
77. Our 1st and 2nd concerns bear upon the first and second factors in paragraph 106 of the Circular in that as the CPO scheme would neither be comprehensive nor deliver the sought-after new leisure destination for London, it is an extremely poor fit with the development plan, and would fail to contribute to wellbeing in the manner planned for in the development plan.
78. Our 3rd concern (Viability) goes to the fourth factor in paragraph 106, namely the potential financial viability of the scheme, and whether there is a reasonable prospect of its delivery. As the Circular explains: "The greater the uncertainty about the financial viability of the scheme, the more compelling the other grounds for undertaking the compulsory purchase will need to be." In the case in hand, the "other grounds" are less rather than more compelling given the abject failure of the CPO scheme to deliver the comprehensive development, and the new leisure destination for London, required by the development plan.
79. Our 4th concern (which is now focussed on the terms of the Access Licence, and the need for an easement) bears upon the 2nd factor, as jeopardising the Club's current and future ability to contribute massively to economic and social wellbeing means that whatever good might come from the CPO scheme in terms of wellbeing (in essence, new homes) would come at the cost of prejudicing THFC's ability to make the vast contributions it makes to wellbeing.

80. We do not doubt that delivering new homes would be in the public interest but that is not the test that the CPO faces. As we said in Opening and reiterate now in Closing - *whatever the case might be in favour of the CPO it is most certainly not one that meets the high bar of being* ***a compelling case*** *in the public interest.*

Chris Katkowski KC

Freddie Humphreys

22nd November 2023

Kings Chambers