**IN THE PLANNING INSPECTORATE**

**TOWN AND COUNTRY PLANNING ACT 1990**

**ACQUISITION OF LAND ACT 1981.**

**INQUIRY INTO THE LONDON BOROUGH OF SOUTHWARK (AYLESBURY ESTATE SITES 1B-1C)**

**COMPULSORY PURCHASE ORDER 2014**

**DCLG REF: NPCU/CPO/A5840/74092**

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# AMENDED CASE STATEMENT ON BEHALF OF AYLESBURY LEASEHOLDERS' GROUP

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This case statement has been drafted without detailed consideration of the supporting documents which relate to the Acquiring Authority's section 73 application. A further note may be submitted when those documents have been considered.

## INTRODUCTION

**1.** The objectors maintain that the CPO should not be confirmed and that the scheme falls foul of Section 226 TCPA 1990, which materially states as follows (emphasis added):

***226.— Compulsory acquisition of land for development and other planning purposes.***

*(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area [...]—*

*(a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land; or*

*(b) [which ] is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.*

*(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects–*

*(a) the promotion or improvement of the* ***economic well-being*** *of their area;*

*(b) the promotion or improvement of the* ***social well-being*** *of their area;*

*(c) the promotion or improvement of the* ***environmental*** *well-being of their area.*

**2.** Furthermore, it is submitted that for the reasons set out below, the CPO should not be confirmed because there is not a compelling case in the public interest.

**3.** Paragraph 12 of the DCLG guidance of compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under threat of compulsion states:

> *A compulsory purchase order should only be made where there is a compelling case in the public interest.*

*An acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. Particular consideration should be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.*

**4.** Paragraph 76 of the guidance materially states:

***76. What factors will the Secretary of State take into account in deciding whether to confirm an order under section 226(1)(a)?***

*Any decision about whether to confirm an order made under section 226(1)(a) will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:*

- *whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework*

- *the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area*

- *whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired.*

**The First Development Site (1b and 1c)**

**5.** The council housing blocks known as Chartridge (4 & 5/6 storeys) , Chiltern (10 storeys), Bradenham (12 storeys) and Arklow (4 storeys) comprise a key site in the Acquiring Authority's regeneration plans for the Aylesbury Estate. The blocks comprise sites 1b and 1c of Phase 1 as set out in the Aylesbury Area Action Plan. They form part of the First Development Site with Ellison House at 370 Albany Road, which is owned by the Ministry of Justice which, as Crown property, does not form part of the CPO.

**6.** The order land comprises 566 dwellings plus 76 leasehold properties ( total therefore 642). Part of the FDS has been demolished since the conclusion of the 2015 Inquiry.

**Leaseholders**

**7.** There were 65 leaseholders in the Order Land in February 2010 when a report to the Council's Executive Committee authorised the making of a CPO (CD10 626). The Cabinet meeting on 18 March 2014 was told that forty six leasehold properties had been purchased through negotiation and that 28 leaseholders remained on the proposed Order land [CD1] (3) . There were said to be 22 leasehold interests at the time of drafting the Council's statement of reasons in the first inquiry [1816]. Mr Kirby gave evidence at the first inquiry on 13 October 2015 that there were 16 leaseholders on the FDS, 8 resident and 8 non-resident. 11 leaseholders objected to the CPO. These lease holders occupied/ occupy properties in all the phases of the scheme.

**8.** As at November 2017 there remain 7 leaseholders with properties on the order land. Four of those leaseholders live in their properties. The remaining 3 leaseholders let their properties to tenants, although it is understood that one of them has moved back onto the estate.

**9.** The Objectors submit that the Order should not be approved for the following reasons:

**1. THE POSITION OF LONG LEASEHOLDERS MILITATES AGAINST CONFIRMATION OF THE CPO**.

**10.** The Acquiring Authority has failed to address the position of long leaseholders in such a way as to demonstrate a compelling case in the public interest. This is essentially why the CPO process was held to have gone wrong in the first public inquiry.

**Gentrification and the affordability gap**

**11.** The leaseholders acquired their properties through exercising a right to buy at a price which enabled them to live in the area and within their BME communities. The effect of the prospect of demolition has been to reduce the value of the leaseholders' properties, especially as the estate has not been maintained by Southwark Council. In September 2012 Southwark council paid one leaseholder on the Aylesbury estate £75,000 for a large, 47 sq m, one-bedroom flat. In 2014, the council paid £147,500 for a four-bedroom, 97 sq m maisonette. Yet by January 2013, the average house price in London was £400,000. (See Guardian article dated 20 September 2016 'What the Aylesbury estate ruling means for the future of regeneration'). Leaseholders who are unable to afford the minimum 25% equity contribution and ongoing costs of home ownership (mortgage, service charges, shared ownership rent) are excluded from the equity scheme. [CD14]. Furthermore, there are restrictions on inheritance in an equity share scheme. George Turner, a researcher and investigative journalist will give evidence to the Inquiry on the affordability gap issue.

**12.** Professor Loretta Lees will give evidence on the issue of gentrification and dispersal of communities. Since the last Inquiry evidence has been made available through Freedom of Information Act applications. Professor Lees will comment on the amount of households which have been rehoused back on the redeveloped footprint of the Aylesbury Estate and the amount of homeless families which have been moved out of Southwark in the last 5 years.

**13.** The effect of the reduction in the value of the Leaseholders' properties and the increasing prices of property in the area of the Aylesbury Estate is that the Leaseholders are unable to afford to live in the area and are therefore compelled to leave that area and their communities.

**14.** Furthermore, the shared equity scheme offered by the AA is unduly restrictive. Beverley Robinson will give evidence as to the restrictions in shared equity leases, such as pre-emption provisions and in relation to inheritance.

**15.** Inspector Coffey held that the individual impacts of the regeneration were such that there was not a compelling case in the public interest and that confirmation of the order would interfere with the rights of the leaseholders under Article 8 ECHR and Article 1 of the first protocol ECHR. The Secretary of State has noted that, even notwithstanding the Acquiring Authority's abandonment of the £16,000 policy '*there remained serious concerns about the options available for leaseholders whose properties were being acquired. In particular, 'the new policy did not meet, in full, the leaseholders' concerns about the potential financial disbenefit associated with the acquisition of their properties. Although leaseholders would no longer be required to use their own savings as a result of the new policy, they would still be means tested if they sought assistance from the Council….. Thus, their savings might still be seriously affected by the confirmation of the Order. Even if they did qualify for assistance, there would still be the issue of potentially higher service charges, ground rent and other legal expenses, such as land tribunal appeals, which would represent a financial disbenefit*" [CD55].

**16.** The position of residents at FDS is similar to that experienced by residents at the nearby Heygate Estate, which was demolished in 2014, where tenants were dispersed as a consequence of estate regeneration. Compensation home owners received for a 2 bedroom flat as a result of the Heygate Estate CPO averaged £107,230. In November 2017 the value of a two bedroom property at the regenerated Elephant Park ( ex Heygate Estate) was between £610,000 to £760,000. Anna Minton will give evidence to the Inquiry *inter alia* on this issue – ( see also Architects Journal article dated 28/09/2016) .

**17.** As noted by the Secretary of State, these concerns were live at the Inquiry before Inspector Coffey. Ms Kabuto was concerned about the erosion of savings due to service charges and other expenses Ms Robinson gave evidence to the effect that she derives her income through her savings and plans to use those savings to fund her return to education. The Objectors will give evidence in relation to these issues at the Inquiry. The findings of Inspector Coffey should stand. They remain valid as at 2017.

**18.** Southwark Council does not permit leaseholders to return to the footprint of the estate [CD13]. The comment by the Acquiring Authority at paragraph 4.6 of Southwark's Statement of Case to the effect that 'Overall we want to create a place with a strong sense of community' is misconceived. The effect of the regeneration scheme is to displace the existing community.

**Leaseholders not entitled to return to the estate**

**19.** The continued refusal by the Acquiring Authority to permit Leaseholders to return to the footprint of the estate perpetuates the displacement of the community. It is not accepted that the Acquiring Authority has mitigated its position through making offers to leaseholders in respect of properties at sites 1a and 7. In particular, Ms Robinson will say that she was informed that she was required to have earnings up to £90k per year in order to move to property at site 7 (Harvard Gardens) . She avers that she was required by London & Quadrant to agree to move into a property at site 1a (Albany Place) prior to receiving any indication as to the sums which she would have been liable to pay.

**20.** A further problem in relation to site 1a is that the shared equity lease with the Site 1a freeholder London and Quadrant, did not offer full uplift to shared equity owners. The leaseholders would not have achieved the full value of their investment from any sale of the property, because the proceeds deriving from increases in property values were to be allocated to L&Q. This would explain why only three leaseholders from across the whole estate took up a shared equity offer to live on Site 1a and only one from the order land (albeit as a tenant - see updated case statement at 4.8).

**‘Like for Like’ policy**

**21.** The AAAP’s Equalities Impact Assessment made specific reference to the “re-housing policy framework for leaseholders and tenants in November 2006”. The Council’s November 2006 rehousing policy and the Council’s Handbook for Leaseholders confirmed ‘Comparative value transaction – the property swap option’ as one of six available rehousing options. This was a ‘like for like’ policy, which was discontinued by Southwark Council in December 2010 [CD14]. The Objectors submit that the policy was cancelled because it had become increasingly difficult to locate equivalent properties because of the low valuations that were, and continue to be, offered for pre-demolition estate properties.

**22.** Since the Inspector made her findings in January 2016, the Acquiring Authority has had an opportunity to re-introduce the like for like policy, but has failed to do so. The Objectors will submit that in the absence of a 'like for like policy' and a scheme which properly addresses the affordability gap, the Order should not be confirmed. The first Inquiry in this matter has demonstrated that Acquiring Authorities should not expect confirmation of schemes which breach Article 8 and Article 1 ECHR rights of Leaseholders and which result in dispersal of leaseholders. Such schemes do not provide a compelling case in the public interest. Neither do they promote well-being in an area.

**23.** Regeneration schemes such as the Aylesbury regeneration present particular difficulties for resident leaseholders who cannot acquire new homes on the footprint of the estate due to the substantial difference in the market value of existing and new properties. The shared equity schemes which seek to plug the affordability gap are unreasonable *inter alia* if they do not enable communities to return to their home locations.

**24.** The Draft London Housing Strategy (September 2017) states at Policy 4.3D : " *The Mayor will act to ensure any affordable houses that are demolished are replaced like for like including affordable homes demolished as part of estate regeneration projects."* Affordable homes are defined as 'homes or households whose needs are not met by the market.' There is a cross reference to the NPPF definition, which includes shared equity / shared ownership housing. It is submitted that this new policy is applicable to homes on regeneration estates occupied by resident leaseholders since their need of a new home, caused by the compulsory acquisition of their existing home, could not be met on the open market.

## 2. (i) THE SCHEME DOES NOT PROMOTE OR IMPROVE THE SOCIAL AND ENVIRONMENTAL WELL- BEING OF THE AREA.

## (ii) THE SCHEME IS NO LONGER IN ACCORDANCE WITH THE DEVELOPMENT PLAN

**25.** The above issues are interlinked. The adopted Local Plan for the Scheme underlying the scheme is the Aylesbury Area Action Plan 2010 ("AAAP") [CD2], which was adopted in January 2010 as part of the Acquiring Authority's local development framework.

**26.** The Objectors will produce evidence at the Inquiry to demonstrate that the scheme fails to comply with the AAAP and other policies of the local development plan. Rastko Novakovc will give evidence on behalf of the 35% Campaign on this issue.

**27.** It is submitted that the failure of the scheme to improve or promote social and environmental well- being and does not accord with the development plan is demonstrated over a range of issues:

### (i) Minimum daylight Requirements / overshadowing

**28.** It has been established that the scheme for the FDS would not improve the environmental well-being of the area.

**29.** Inspector Coffey found that the scheme for the FDS would not improve the environmental well-being of the Order Land due to failures to meet BRE minimum daylight requirements. The objectors rely on paragraphs 368-370 of the Inspector's Report (CD50):

*368. Due to the height and density of the scheme only 81% of the rooms across the FDS will achieve the minimum daylight requirements of the BRE, which form part of the Council's adopted residential design standards.222 Within Block 1, 88 rooms fail to meet the minimum requirement, within Blocks 5 and 6, 170 rooms and 130 rooms respectively fail to meet the requirement. Although many of these rooms will be bedrooms, the BRE requirements are applicable to all habitable rooms. Inadequate daylight in any of these rooms would limit the future occupants' flexibility to occupy the space as they wished.*

*369. BRE guidance recommends that in order for an outdoor amenity area to be adequately sunlit at least half of the area should receive a minimum of 2 hours sunlight on 21 March. The courtyards within blocks 1 and 6 fall below this standard with only 39.6% and 26.7% respectively receiving at least 2 hours of sunlight.223 This is to a large extent a function of the tall buildings on the Albany Road frontage, which overshadow these amenity areas. Within blocks 2 and 3, which contain predominantly terraced housing, only 3 of the 49 private amenity spaces receive sufficient sunlight to meet the BRE standard. Whilst adopted standards should not be applied inflexibly, the number of rooms and amenity areas that fail to comply with the Council's own adopted standard is considerable, particularly given the number of residents served by these amenity areas and the fact that the scheme is part of a wider redevelopment and as such is not constrained by existing buildings.*

*370. I appreciate that the courtyards could be landscaped in a manner to optimise their use, however, due to the height of the buildings on the Albany Road frontage they would be severely overshadowed relative to the existing amenity areas. It is intended that these courtyards would be multi-purpose areas providing for childrens' play, recreation, vegetable gardens and in the case of Blocks 4 and 5 ventilation for underground parking. Nonetheless, given that it is intended that these dwellings will replace existing housing which benefits from good standards of daylight internally and well lit sunny amenity areas, the scheme for the FDS would not improve the environmental well-being of the Order Land.*

**30.** It is relevant to note that the Secretary of State agreed with the Inspector on this issue (see DL, paragraph 15).

**31.** Confirmation of the order therefore conflicts with Section 226(IA) TCPA 1990. No action has been taken by the Acquiring Authority to address this fundamental flaw in the scheme.

**32.** On or around 8 November 2017 the Acquiring Authority disclosed details of a recently validated section 73 application, in which the proposed changes are sought:

In relation to the FDS:

- A revised mix of residential units and tenures to deliver an additional 12no residential units;
- Alternations to external elevations;
- Removal of the approved Gas Pressure Reduction System;
- Alterations to the landscape layouts

In relation to Plot 18 (blocks 1 & 3)

- A revised mix of residential units and tenures within Block 1 and Block 3; and
- Alterations to the siting and façade of Block 3 of the North Block,

**33.** It is relevant to note that section 73 applications relate to minor amendments to a consented scheme and it is unclear whether the applications which involve substantial amendments ( i.e 3 new dwelling houses) to the consented scheme would be approved or whether a full application is required. The applications should therefore be treated with a degree of caution and, as at 9 November 2017, the findings of the Inspector at IR368-370 in relation to the consented scheme represent the current position. There is no good reason why the previous conclusions should not be adopted at the 2018 Inquiry.

**34.** In any event the position relating to daylight and overshadowing is not materially affected by the section 73 applications. The supporting statement to the FDS and Plot 18 section 73 application deals with Daylight, sunlight and overshadowing at section 4. In particular paragraph 4.3.1 states that ‘ *in line with the results of the 2014/2015 ES, 80% of all rooms meet the BRE criteria for the Average Daylight Factor (ADF) calculation, and 75% of them meet the recommended values for the sky-view test’.* It is therefore uncontentious that, as found by the Inspector, one in 5 of the rooms in the FDS will fail to comply with

the BRE requirement and will be inadequately lit.

**35.** It is stated at paragraph 4.3.2 that the original assessment in relation to overshadowing as presented in Chapter 10 and appendix 10.1 of the 2014/2015 Environmental Statement are still valid. This is unsurprising since there are no changes to the heights and massing of the buildings. Paragraph 4.3.4 confirms that the minor amendments to the scheme are expected to have an imperceptible impact upon the daylight and sunlight when compared to the original assessment.

**36.** The scheme is therefore contrary to Policy 7.6 of the London Plan:

> **Planning decisions**
> B Buildings and structures should…….:
> d not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy, overshadowing, wind

**37.** The scheme is contrary to section 2.7 of Southwark Council's Residential Standards Supplementary Planning Document, which sets out as follows:

> *Residential development should maximize sunlight and daylight, both within the new development and to neighbouring properties. Development should seek to minimize overshadowing or blocking of light to adjoining properties. A lack of daylight can have negative impacts on health as well as making the development gloomy and uninviting. Developments should meet site layout requirements set out in the Building Research Establishment (BRE) Site Layout for Daylight and Sunlight – A Guide to Good Practice (1991)*". ( NB – now superseded by BRE Handbook 'Site Layout Planning for Daylight and Sunlight 2011: A Guide to Good Practice, Second Edition' (2011). ( Littlefair).

**38.** The scheme further conflicts with the Aylesbury Area Action Plan, which states that one of the main aims of the development is the improvement of:

> "*...the open space, security, lighting, play facilities and maintenance*"

**39.** Furthermore, the AAAP contemplates 'green fingers' running south to north across the estate, which would have enabled well- lit public open spaces. These amenities have been replaced by barrier blocks.

**40.** The scheme conflicts with saved policy 4.2 of the Southwark Plan which states:

> *"Planning permission will be granted for residential development, including dwellings within mixed use schemes, provided that they... include high standards of...natural daylight and sunlight..."*

**41.** As previously stated, there is no good reason why the findings of Inspector Coffey on the issue of minimum daylight requirements should not be adopted by the Inspector determining the 2018 Inquiry. This issue is substantial in relation to the issues of policy compliance and environmental well-being. At the very least, the CPO should not be confirmed for this reason alone.

**42.** The Objectors will call evidence from a lighting expert at the Inquiry in January 2018.

**(ii)** **Minimum number of new homes requirements / housing uplift requirements**

**43.** Paragraph 3.1.4 of the AAAP states:

"*The London Plan's requirement for Southwark is 16,300 new homes by 2016/2017. The AAP will deliver about 1,450 extra homes to contribute towards this target.*"

**44.** The AAAP baseline of existing homes in the action area core is stated as 2,758 (paragraph 3.1.3). The AAAP requires 4,208 new homes to be built in the action area core (2758 + 1450 extra homes to be built). However, NHHT obtained planning consent for the FDS and remaining phases which required only 2,580 new homes to be built - 830 on the FDS and 1700 (minimum specification) on the outline. There is therefore a shortfall

**45.** NHHT has submitted an application for an amendment (ref 17/AP/3885) to the consent which would increase the total number of homes on the FDS to 842. This increase does not address the shortfall from the AAAP.

**46.** In order to deliver the required 4,208 homes Appendix 5 of the AAAP stipulates a requirement of 425 new homes on completed phases 1a/site 7. However only 408 have been provided. 3,566 new homes are required by the AAAP on the remaining FDS and outline schemes combined.

**47.** NHHT's planning applications for these sites proposed just 830 units on the FDS and 1,700 on the Outline site totaling 2,530 homes - a significant shortfall of over 1,000 homes. Just 1,270 of the 2,530 would be affordable ( see table 14 in Officer's report) , which added to the 210 provided on completed phase 1a/site 7 would result in just 1,480 affordable homes built on the redeveloped estate. This falls well short of the AAAP's requirement for at least 2,100 new affordable homes (AAAP para 3.3.1) and the GLA's baseline requirement of 2,402 social rented homes on the Aylesbury estate (see GLA stage 1 report).

**48.** The shortfall is set out in tabular form below:

| Phase | AAAP reqs. | Consented units (minimum) | Shortfall |
|---|---|---|---|
| Phase 1a/Site 7 | 425 | 408 | 17 |
| FDS | 880 | 830 (842) | 50 (38) |
| Outline (P2, P3, P4) | 2,898 | 1,700 | 1,198 |
| Total | 4,208 | 2,938 | 1,270 (1,258) |

**49.** The GLA blocked the proposals within its stage I response, because "*the proposed net loss of affordable housing does not comply with London Plan policy*". (para 13)

**50.** The Acquiring Authority sought to address this shortcoming by agreeing with NHHT to set a minimum requirement for the number of affordable homes to be provided such that there would be no net loss of affordable housing. Despite the London Plan specifying that net loss should be calculated in terms of floorspace, the Acquiring Authority decided to use habitable rooms for its calculations instead.

**51.** Policy 3.14 of the London Plan resists the loss of affordable housing, without equivalent replacement (emphasis added):

> "*3.14 (B) : Loss of housing, including affordable housing, should be resisted unless the housing is replaced at existing or higher densities with* ***at least equivalent floorspace****.*
>
> "*3.82 ESTATE RENEWAL: Where redevelopment of affordable housing is proposed, it should not be permitted unless it is replaced by better quality accommodation, providing* ***at least an equivalent floorspace*** *of affordable housing.*" (emphasis added)

**52.** The AA also chose a different baseline to that in the GLA's stage I report. It selected a May 2008 baseline for the calculation which showed 6,887 social rented habitable rooms as the baseline (para 89 of 14/AP/3844 OR). The Mayor's stage I report gave a February 2008 baseline of 7,345 social rented habitable rooms (para 20) - a significant and unexplained difference.

**53.** The AA took the baseline of 6,887 and deducted the 703 affordable habitable rooms re-provided on completed phases 1a/site 7. It then further deducted the 1,394 affordable habitable rooms proposed on the FDS and was left with a shortfall of 4,790 habitable rooms against the baseline.

**54.** It would appear that the intention of the AA was to write a condition into the section 106 agreement requiring at least 4,790 affordable habitable rooms to be constructed on the Outline site.

"*with Phase 1A and Site 7 in place, and assuming that the FDS scheme is delivered in line with the current application, then an additional 4790 habitable rooms of affordable housing* ***in phases 2, 3 and 4*** *would be required to deliver full replacement of the baseline.*" (Planning Committee report 14/AP/3844, para. 101)

**55.** The section 106 Agreement ought to have secured the maximum housing requirement, yet only secured a minimum requirement. The objectors submit that the final section 106 legal agreement failed to secure this minimum requirement. It failed to require a minimum of 4790 affordable habitable rooms under the outline application. The provisions of the section 106 agreement state that NHHT could deliver *either* a minimum of 4790 affordable habitable rooms on the Outline Development *or* 50% of all habitable rooms as affordable housing across the FDS and the Outline applications combined - whichever is the greater.

**56.** The difficulty presented by the wording of the section 106 agreement in this regard is that the 4790 rooms are stated to be required across the FDS and outline. Yet the section 106 agreement already secures rooms for the FDS. The result is that the number of habitable rooms secured for the outline area are reduced as a consequence of the figure not being stated as pertinent to the outline land only. Accordingly, the number of habitable rooms across the outline land falls below the minimum requirement.

**57.** In the circumstances, if the order is confirmed NHHT will be able to build the Scheme out to the minimum specification, thereby failing to comply

with key AAAP objective of increasing the number of homes (see paragraph 3.14) and policy 3.14 of the London Plan.

**58.** A considerable difficulty with the affordable homes provision in the section 106 agreement is found in the definition of ‘’Habitable Rooms’ for the purposes of calculation of the minimum affordable housing provision. The definition allows any room larger than 27.5m2 to be counted as two habitable rooms for affordable housing provision. A similar ‘double counting’ provision appears in the DPA. Although double counting is permitted in the Residential Design SPD, its effect presents a potentially misleading picture of the extent of affordable housing that will be provided over thee FDS. It is unclear whether the existing accommodation was double counted in this way.

**59.** The Mayor's new Affordable Housing and Viability SPD states:

*“homes at social rent levels should be replaced with homes at the same or similar rent levels, or that specialist types of affordable housing should be replaced with the same type of housing. The Fast Track Route does not apply in these circumstances, and all estate regeneration schemes should follow the Viability Tested Route to deliver the re-provision of the existing affordable floorspace on a like-for-like basis and maximise additional affordable housing.”*

*“Habitable rooms in affordable and market elements of the scheme should be of comparable size when averaged across the whole development. If this is not the case, then it may be more appropriate to measure the provision of affordable housing using habitable floorspace. Applicants should present affordable housing figures as a percentage of total residential provision by habitable rooms, by units, and by floorspace to enable comparison.”*

[NB – This is reflected in Southwark’s emerging plan, which states that “*Where affordable habitable rooms and market habitable rooms are not*

*of equivalent size across the development affordable housing requirements will be calculated in floorspace."]*

**60.** London Plan policy 3.14 is clear that net loss of affordable housing is resisted and should be calculated in terms of **floorspace**.

**61.** The GLA stage 1 report for the outline site stated that comprehensive floorspace figures for the Aylesbury estate are not available. However, paragraph 353 of the FDS planning committee report confirms that "*The total existing floorspace on the FDS equates to approximately 54,747sqm*". ( NB – this figure includes the leasehold properties).

**62.** The AA's accommodation schedule (bundle ref) for the revised planning application shows that it proposes 27,429 sqm of social rented floorspace. This is a considerable net loss.

**63.** The AA may argue that shared ownership housing should be included in the overall 'affordable' housing re-provision. Even if this is permissible, the accommodation schedule shows 13,449 sqm of shared ownership floorspace bringing the total to just 40,878 sqm – still a considerable net loss.

**64.** The Mayor's Housing SPG states at paragraph 5.1.14 that the re-provision of housing may be considered in terms of units numbers and/or habitable rooms. However, the circumstances in which calculations may be made on the basis of habitable rooms are limited :

"*5.1.14 Calculations of whether there is a loss of affordable or overall housing provision can be made on the basis of habitable rooms rather*

*than dwellings, where the redevelopment of an estate is providing a housing mix more appropriate to the needs of both existing and prospective future residents – for example where there is increased provision of dwellings for larger households.*"

**65.** It is submitted that the scheme does not provide "*a housing mix more appropriate to the needs of both existing and prospective future residents.*" In particular, the Scheme fails to provide "*increased provision of dwellings for larger households*". This is addressed in the following section explaining the Scheme's failure to comply with the minimum dwelling size requirements and minimum space standards.

**66.** The Objectors also note that the AA has failed to ensure that there is no net loss of affordable housing. Such failing may present a barrier to it receiving funding for the redevelopment.

**(iii) Dwelling size requirements**

**67.** The AAAP says "*There will be a significant proportion of family homes with 23% houses, together with all the facilities needed by families, to make sure that the whole area is family-friendly.*"

**68.** However, the approved FDS planning consent provides only 6% houses. Although it provides 10% maisonettes, these are classified as flats for planning purposes.

68. Of the 60 3-bed dwellings required by the AAAP on completed phases 1a/site 7 - only 30 were provided. The AAAP requires 149 3-bed

dwellings on the FDS but only consented 108. The AAAP requires 38 4-bed dwellings but only 32 were in the planning consent.

69. The shortfalls in the family homes required by the AAAP are far more severe on the Outline scheme under the minimum specification.

70. Paragraph 93 of the planning committee report for the Outline Scheme shows that the minimum specification would result in the re-provision of just 263 'social rented' family homes (3-bed and above). This compares with 776 social rented family units on the existing Outline site right now (874 listed in the S106 Heads of Terms for Outline and FDS combined, minus 98 social rented family homes on FDS).

71. This will prevent the requirements of paragraph 7.2.6 of the AAAP being satisfied: *“We will accommodate approximately 50% of existing tenants through the re-provision of homes on site”.*

72. Policy BH4 of the AAAP sets out the requisite mix of housing sizes in the action area core and requires that at least 70% of homes are to have two or more bedrooms; at least 20% are to have 3 bedrooms; at least 7% to have 4 bedrooms and at least 3% are to have five or more bedrooms.

73. The Sustainability Assessment for the AAAP states:

> "*A recent Housing Needs Survey (2003) for Southwark identified 35,851 households stating a need to move in the next 5 years. Of those households, 48% stated the main reason for needing to move was that their home was too small and 54.3% needed a home with 3 or more bedrooms.*
>
> "*The revised tenure mix new option was chosen as it minimises the loss of affordable housing and will help develop a mixed and sustainable community. It will also ensure that the rehousing needs of existing tenants are met.*"

74. There is a significant shortfall between the AAAP requirements and the dwellings for which planning consent has been obtained.

**(iv) <u>Dwelling Mix Requirements</u>**.

75. In NHHT's submitted amendment (17/AP/3885) to the FDS planning permission (14/AP/3843) the residential unit mix does not conform to AAAP BH4. The amended amounts will deliver 55% with two or more bedrooms; 70% is required; they will deliver 19% with three or more bedrooms, 20% is required; 6% with 4 or more bedrooms, 7% is required and 2% with 5 or more bedrooms, 3% is required (G L Hearn Supporting Statement 5.26).

76. The proportions of housing types in the submitted amendment do not conform to AAAP BH5 (requirement in brackets); flats 82% (60%); maisonettes 12% (17%); houses 6% (23%) (G L Hearn Supporting Statement 5.38)

77. The objectors note that submitted amendment proposes reducing the proportion of 4p2b units from the consented scheme's 65% to 50%; 50% is in line with AAAP 3.4.6

**(v) <u>Wheelchair accessible requirements</u>**

78. Paragraph 7.22 of the AA's updated case statement claims that there are 40 wheelchair accessible dwellings in the FDS planning consent. It also states that in addition there will be 13 wheelchair accessible homes in the Extra Care Unit. This claim is inaccurate - 53 homes out of a total of the 830 consented represents just 6.3%. As such the development is inconsistent with Policy 3.8 of the London Plan and saved Policy 4.3 of the Southwark Plan 2007 [CD23].

79. Secondly, the accommodation schedule (Table 6.2.1) of Chapter 6.2 of the Design and Access Statement for the FDS planning consent states that there will be only 21 wheelchair accessible units. It states that in addition to these there will be 19 dwellings which will be *adaptable*; i.e. capable of being converted to wheelchair use.

80. Southwark Plan Policy DM6 says nothing about enabling *wheelchair adaptable* units to be counted in calculating provison. As such the consented Scheme will provide only 21 *wheelchair accessible* dwellings in the mixed tenure block and 13 wheelchair accessible homes in the Extra Care Unit.

81. Policy DM6(1.3) of the Southwark Plan further stipulates that all wheelchair accessible accommodation must "*meet the saved minimum space standards of the South East London Wheelchair Housing Design Guide*" and must be designed to comply with Building Regulation M4(3). Section 6.3, paragraph 1 of the Design and Access statement confirms that just 9 of the dwellings in the Extra Care Units conform to these standards. There is no evidence that any of the 21 wheelchair accessible homes in the remainder of the development comply to these standards or Building Regulation M4(3).

82. The Table 6.2.1 referred to above also shows that just 11 of these 21 homes will be social rented homes.

83. As a result, the Scheme fails to comply with a key policy objective of the AAAP, which is to provide "*high quality social rented and private homes that address a variety of local needs, including those of the elderly and vulnerable.*" (See 1.6. – The vision and plan objectives).

84. The S106 agreement fails to secure the minimum 10% wheelchair units required by the London Plan and AAAP and instead adopts a marketing approach across all tenures i.e. the number of wheelchair accessible dwellings will be determined by the number of tenants with wheelchair requirements being decanted at the time of construction.

*85.* The proposed amendments to the FDS maintain the 12% wheelchair proportion in the consented scheme, giving ' *A total of 99 units suitable for wheelchair users'.* (Schedule 3 Section 12). However, these proposals are not reflected in the current section 106 agreement.

86. NHHT claims this exceeds 10% policy requirement (Supporting Statement 17/AP/3885 para 5.44). There is a discrepancy between this statement and the position of the AA as set out in its statement of case. Again, the Inspector is urged to treat with caution a section 73 application, which amounts to significantly more than minor alteration.

**(vi) <u>Renewable Energy requirements</u>**.

87. Policy BH6([i]) of the AAAP requires new developments in the core action area to be serviced by one centralised combined heat and power energy plant. Policy BH6(ii) envisaged that the CHP plant would be fuelled by renewable energy (biomass) and required developments completed prior to be fuelled by a minimum 20% <u>on-site</u> renewable energy. Paragraph 6.3.3 of the AAAP's Sustainability Assessment confirms the position.

> "*New developments will also need to reduce carbon emissions by 20% using carbon renewable technologies. Currently, the most feasible way of doing this would appear to be by providing biomass CHP in the energy centre.*"

88. The planning committee report for the FDS application acknowledges that the Scheme *"falls far short"* of complying even with the 20% minimum on-site renewable energy requirement ( see paragraph 365). Furthermore, the Scheme falls short of these requirements in that the biomass plans have been dropped and the development on the FDS will be serviced by its own separate individual (non-renewable) gas-fired CHP plant, which will have the 'potential' to be connected to the proposed energy centre on Thurlow St, but will not be serviced by it. This is acknowledged in the planning committee report for the FDS application.

89. The 20% minimum on-site renewable energy requirement is not just a requirement of the AAAP, it is also a requirement of both the AA's Core Strategy and the London Plan.

90. Paragraph 3.6.1 of the AAAP requires the Scheme to result in 'zero carbon growth':

> ***"The development will be designed to result in zero carbon growth, that is, no net growth in carbon dioxide emissions despite an increase in the number of dwellings. This will require buildings which are highly energy efficient."***

91. The Acquiring Authority has produced no evidence that the Scheme complies with the renewable energy requirements of the AAAP. Moreover, the section 106 agreement only requires a minimum 3% renewable energy across the FDS and outline scheme.

92. In March 2016, The Mayor of London set out the approach to achieving the London Plan policy requirement of 'zero carbon homes' for major developments in the Housing Supplementary Planning Guidance (SPG), published in March 2016. In January 2017 the Acquiring Authority confirmed that developments in the borough must comply with this policy ( See 'Zero carbon homes and the carbon offsetting fund').

**(vii) Building Heights requirements**

93. It was pointed out during the previous inquiry that the tall buildings all private units) running east to west along the frontage to Burgess Park, will result in a significant number of homes in the affordable blocks behind them failing to meet BRE minimum daylight requirements.

94. This was taken up by the inspector at the previous inquiry and the criticisms are outlined in detail in paragraphs 368-370 of her report. The planning committee report also openly acknowledged the shortcomings of the scheme in relation to daylight requirements:

"*It is acknowledged that failure to achieve full compliance with BRE guidance for minimum ADF levels is a less positive aspect of the proposal*" (paragraph 139)

95. AAAP Paragraph A6.6.3.7 says that "*Tall buildings should achieve some visual separation from adjacent developments.*"

96. Policy PL4 says that there should be two tall buildings on the order land ranging from 10-15 storeys, but the consented plans show three tall buildings along the Albany Road frontage, ranging from 14 to 20 storeys. It appears that the scheme utilises tall building blocks at the front with impressive views over the park (such buildings commanding a higher value) and, at the same time those buildings block out light from the social housing at the rear of the development.

97. Furthermore, Southwark' s Residential Design Standard SPD states that 'Taller buildings should be sited to the north of the development' (pg 17); the Aylesbury redevelopment's tall buildings are all to the south, within the FDS.

98. AAAP Policy PL4 states: "The design of these taller buildings needs careful consideration. They should be elegant and slender. Proposals should demonstrate that harmful effects on residents, pedestrians and cyclists, such as overshadowing and wind funnelling, will be minimised.

99. Paragraph 5.223 of NHHT's planning statement explains that one of the reasons for the sunlight/daylight failure is because "*the development proposes the tall buildings along the park boundary to maximise the number of apartments with a view of the park*".

100. AAAP Paragraph A6.5.5 of the AAAP provides some mitigation for the impact of the tall blocks:

"*The frontage along Burgess Park must include a strong building line, allow for a range of heights and massing and include excellent architectural design. The park front should be designed to allow for light into rear courtyards and allow for views and glimpses from the park into the areas beyond the immediate front.*"

101. AAAP Paragraph A6.5.7 envisages that this will be achieved using a series of 'green fingers' - "*a series of multi-functional spaces that link with Burgess Park*" :

"*A series of 'green fingers' will be created, extending from Burgess Park into the action area core interlinking the park with the development. Their predominant function is that of a public space with social interaction, pedestrian and cycle movement dominating.*"

102. However, substantial 'green finger' area has been removed from the scheme ( see diagrams set out in evidence of 35% campaign). The effect of such removal is that the proposals for the order land will now

suffer from the very problems that the AA has attributed to the estate in its grounds for redevelopment – *inter alia* lack of permeability and dark alleyways and will not bring about the AAAP's objective of creating better quality open space/public realm.

**(viii) <u>Open Space requirements</u>**

103. The consented scheme will result in a significant net loss of open space. The current FDS Planning consent falls short of the open space requirements set out in the AAAP. Policy PL5 (Open Space) of the AAAP states:

> "*New development must provide a high quality network of public open spaces of different sizes and functions which link well together and contain good pedestrian and cycling routes.*"

104. The planning officer's report for the Outline Scheme provides an analysis which shows a net loss of open space.

105. The Planning Committee report for the outline masterplan scheme provides an analysis, which aggregated net loss including the FDS site and it acknowledges that there will be a net loss of 1.8 hectares of open space as a net change against the AAAP.

provided as part of the FDS (0.39ha). Table 22 below sets out the amount of public open space proposed across the Aylesbury Estate.

**Table 22:** Public open space provision

| | **Public accessible open space (Ha)** |
|---|---|
| Existing Housing Green Space baseline | 4.8 |
| Early phases | 0.12ha |
| Proposed detailed phase | 0.39ha |
| Proposed Outline phase | 2.49ha |
| **Regeneration Programme total** | **3** |
| ***net change against AAAP*** | ***-1.8ha*** |

157 Whilst it is acknowledged that there will be a reduction in the overall amount of amenity space compared to the existing estate, the AAAP assumed there would be an increase in density and that new spaces would be designed to maximise attractiveness and usability.

106. Furthermore, the majority of the replacement open space will be privately managed by a subsidiary company set up by NHHT. Only the smallest of the three new open spaces on the FDS (Albany Rd Frontage[400sqm]) will be public open space adopted by the Council.

107. The current FDS planning consent clearly falls well short of the open space requirements proposed in the AAAP.

**(ix) <u>Transport/public realm requirements</u>**

108. The scheme fails to provide an adequate environment for cycling, thereby breaching the Acquiring Authority's Cycle Strategy, Sustainable Transport SPD and Policy DM46(5) of the New Southwark Plan which makes requirements for cycling including: *"providing space within the development, where required for the expansion of the cycle hire scheme."*

109. It is noted that NHHT's submitted amendment (17/AP/3885) to the FDS planning permission (14/AP/3843) would increase the number of cycle spaces to a policy compliant 1,308 (London Plan Policy Table 6.3). The

consented scheme had a shortfall of 58 spaces (Supporting Statement 5.63, 5.64). However, the AA has proposed to increase the number of cycle spaces, but not has not provided space to expand the cycle lane scheme. The Inspector is referred to the position of TFL as set out in the evidence of Rastko Novakovic.

**(x) Private Amenity Space requirements**

110. Policy PL7 of the AAAP states :

"*All development must contain high quality private open space in the form of communal gardens, private gardens and useable balconies. The design of communal gardens should comply with the guidance in Appendix 6.*"

111. The appendix 6 referred to in Policy PL7 states:

"*All dwellings must have direct access to private open spaces, whether in the form of a garden, roof garden, courtyard or balcony. 1/2 bedroom dwellings must have a minimum of 6 sqm of private amenity space. Larger dwellings should aim to meet the minimum standards set out in the Residential Design Standards SPD.*"

112. The Residential Design Standards SPD requires 3 bedroom flats to have a minimum of 10sqm and "*For new housing, a minimum of 50sqm of private garden spaces is required and this should be at least 10m in length. The private gardens should extend across the entire width of the dwellings.*"

113. Paragraphs 143 and 144 of the planning committee report re-affirm these requirements:

"*The AAAP Appendix 6 requires at least 6sqm private amenity space for one and two bedroom flats with the remaining units being required to meet the minimum private amenity space standards set out in the SPD Residential Design Standards. The SPD requires flats with three or more bedrooms have a minimum requirement of 10sqm. With regards to houses, the SPD seeks private gardens that are at least the width of the house, extend at least 10 metres in depth and provide 50sqm of garden space. This requirement also applies to ground floor maisonettes.*"

114. Paragraph 147 of the planning committee report for the FDS, confirms that only one terraced dwelling in block 2 meets with the minimum 10 metre depth requirement and eight further dwellings fail to meet the 50sqm minimum garden space requirement. Paragraph 148 confirms that none of the dwellings in block 3 meet with the 10 metre depth and only five meet with the 50sqm garden space requirement.

115. The Objectors note that the planning committee report incorrectly sought to offset the above shortfalls against the communal amenity space provided. The Residential Design SPD says that this is permissible, but only in relation to new flatted developments (SPD paragraph 3.2) not new detached, semi-detached or terraced houses (SPD paragraph 3.1).

116. NHHT's submitted amendment (17/AP/3885) to the FDS planning permission (14/AP/3843) private amenity space will reduce the garden space for 4 of the social rent houses in subplot 2, for 3 homes below 50sq m. The Residential Design Standards SDP 3.1 recommends 50sq m of private garden space, 10m in length, for new housing. Further evidence will be submitted after the objectors have been able to

analyse the documents submitted in support of the amended application.

**(xi) Dual aspect design requirements**

117. Appendix 6 paragraph A6.7.8 of the AAAP states *"At least 75% of apartments in each development should have dual aspect."* Paragraph 128 of the planning committee report [CD63] confirms that only *"70% of apartments and maisonettes/duplex units"* on the FDS site will be dual aspect.

118. In NHHT's submitted amendment (17/AP/3885) to the FDS planning permission (14/AP/3843) 71% of apartments, maisonettes/duplex units and 100% of houses will have dual aspect. This improves on the consented scheme, but still falls below the 75% target (Supporting Statement 5.42).

**(xii) Privacy and overlooking requirements**

119. Appendix 6 of the AAAP requires proposals to ensure that the privacy of occupants is protected without compromising the ability to create a compact urban neighbourhood. It does not set out specific requirements for separation distances, but instead references the Residential Design Standards SPD.

120. The Residential Design Standards SPD, specifies a minimum rear-rear separation distance of 21m, but paragraph 140 of the planning officer's report acknowledges that *"there is one point at which the distance between habitable windows for the general needs flats reduces to 14 metres, but generally the distance is between 17m and 20m."* [CD63].

121. In NHHT's submitted amendment (17/AP/3885) to the FDS planning permission (14/AP/3843) the three new town houses will meet the distance requirements of the Residential Design Standards SPD (para 2.8), but there is no change otherwise to the consented scheme, which allowed a 12m rear separation distance, below the 21m required (Officer's report 14/AP/3843 para 141) – See GL Hearn supporting statement at 5.67.

**(xiii) <u>Play Space requirements</u>**

122. Policy 3.6.2 of the AAAP says: "*We will require children's play areas to be integrated into the residential areas. About 3 hectares of children's play space and youth space will be provided*".

123. Policy PL6 of the AAAP says "*All development proposals must provide 10sqm of children's play space / youth space per child bed space. Doorstep playable space should be provided within each of the housing blocks, whilst larger local playable spaces should be provided within selected housing blocks and within the green fingers and existing local parks, in accordance with Figure 12. New youth space should be provided within the larger areas of public open space.*"

124. The New Southwark Plan provides further detail on how the 10sqm of play space per bed space requirement should be calculated (see table 6).

125. The consented scheme falls short of the requirement of policy PL6 of the AAAP, which requires 10sq m of children's play space and youth space per child bed space.

126. NHHT's submitted amendment (17/AP/3885) to the FDS planning permission (14/AP/3843) would add 27 children to the scheme's

population and increase required play space to 1650sq m for U-5s (which will be met 'comfortably') and to 1,180sq m for 12+ years (which will be met, but offsite, against London Plan Policy 3.16 para 3.41). The space for 5-11s will increase from 1,500sq m to 1,580sq m, but will be 99 sq m short of what policy requires. The amendment refers to Westmoreland Park's 'dedicated play area' and Burgess Park as compensation (Supporting Statement 5.53 – 5.55).

**(xiv) Land use requirements**

127. The AAAP laid out the parameters for the layout of the development on the FDS as six blocks. The layout for the consented plans proposes just four blocks.

128. AAAP policy **'**COM6**'** requires the Scheme to *"Provide 1,750 square metres of new local retail facilities (convenience retail, cafes and restaurants) within the action area core"*, in order to create a mix of uses.

129. Appendix 5 of the AAAP specifies that the FDS should provide a minimum of 250sqm retail space, but the consented plans do not propose any retail floorspace. Paragraph 80 of the FDS planning officer's report [CD63] justifies the compliance failure by arguing that NHHT is providing 250sqm of D1 or D2 use class, permitting it *"to be used as an Early years facility or a gym subject to need and demand"*.

130. The AAAP requires 263sqm of community use facilities on the FDS, but the consented plans only make provision for 250sqm.

131. It is noted that NHHT's section 73 application now proposes a policy compliant 263sq m community use facility (Supporting Statement 5.6). The Inspector is requested to take a cautious approach to the section 73

application. In particular it does not propose minor changes, but, in one instance, proposes the addition of 3 town houses. (Supporting Statement 5.65 – 5.68)

132. The AAAP required 400 council houses on the FDS. This requirement has not been delivered in either the DPA or the section 106 agreement.

## 3. THE PURPOSE FOR WHICH THE ACQUIRING AUTHORITY IS PROPOSING TO ACQUIRE THE LAND COULD BE ACHIEVED BY OTHER MEANS.

133. Professor Jane Rendell, a Professor of Architectural Art at University College London, gave evidence before the Inquiry in 2015. The Inspector's conclusions on this issue are at paragraphs 378 to 386. The Inspector concluded that a refurbishment scheme would deliver many of the benefits of the regeneration scheme and would be less disruptive to the existing residents on the estate. Yet, the Inspector concluded that such a scheme would fail to deliver certain benefits of the current scheme including extra care housing, housing for the disabled and the provision of additional homes. There was insufficient evidence before the Inspector to enable her to reach a finding on whether the funding arrangements in relation to the six acres estate would be appropriate for the Aylesbury Estate.

134. The Objectors maintain that in view of the substantial funding shortfall as caused by the withdrawal of £180 million in government funds, the regeneration scheme is no longer viable nor deliverable. Whilst NHHT and Southwark Council remain contractually committed to deliver the FDS scheme, it is noteworthy that NHHT has sought to resile from its obligations in the face of what has become an undeliverable scheme.

138. In September 2016, the Acquiring Authority announced at a Cabinet meeting that "*the impact of measures in the Housing and Planning Act have reduced the ability of NHHT's Board to progress Phase 2 and Plot 18 at this stage*" (para 8) and that "*due to the costs*" and "*CPO delay*", NHHT was no longer willing to fund the demolition costs of the FDS that it was obliged to under the terms of the Development Partnership Agreement (DPA) - (para 12) – (See DPA Schedule 10, paragraph 2.4).

139. The Objectors note the evidence provided to the previous inquiry, upon which the Acquiring Authority argued that there was both board-level approval and contractual requirements in the DPA, obliging NHHT to proceed with the FDS Scheme regardless of whether it is viable or not. (see paras 92 and 388 of the inspector's report). However, the September 2016 revelations are such that the refurbishment option merits reconsideration.

140. The evidence before the Inquiry in 2015 was that there is no available evidence on which to make a comparison between rebuilding and refurbishment. It is understood that a costed scheme for demolition and rebuild on the Order Land did not exist at the time the decision to demolish the Aylesbury Estate was taken on 27 September 2005. There has been no disclosure of any 2005 cost comparison between the demolition option and the refurbishment option.

141. Indeed, it is still not possible to make a detailed designed and costed comparison between refurbishment and demolition/rebuilding today. The objectors have been hampered in their attempts to do so *inter alia* because key aspects of the financial arrangements between Notting Hill Housing Trust and Southwark Council have been redacted and are not available for public scrutiny. It is anticipated that Simon Morrow, a chartered quantity surveyor, will give evidence at the January 2018 Inquiry in relation to refurbishment costs per dwelling. The Objectors will

request disclosure of material that will allow his to undertake an assessment on this issue.

142. As matters stand, the following can be ascertained from the only designed and costed comparison between demolition-rebuild and refurbishment that exists – the report commissioned by Southwark Council and provided by Levitt Bernstein in 2004–05 in their scheme for the south-west corner of the Aylesbury Estate:

(i) Refurbishment of specific blocks on the estate was the cheaper option.

(ii) New dwellings could have been added while retaining the existing footprint of the estate.

143. The case of Islington's Six Acres Estate, for example, which consisted of the refurbishment of an estate built using the same construction system and at roughly the same time as the Aylesbury Estate, could have provided the Public Inquiry of 2015 with an up to date comparison. However, Islington Council declined an invitation to provide detailed evidence. Levitt Bernstein declined to give evidence to the Inquiry owing to a conflict of interest.

144. The remaining leaseholders live in the Chartridge block and Chiltern South blocks. It is submitted that the aims of the scheme can be met through retaining those blocks and refurbishing them within a redeveloped scheme on the FDS. The architectural style of the Chartridge and Chiltern blocks retains a cultural and heritage value, which has been recognised in other schemes.

144. Simon Morrow a chartered quantity surveyor, will give evidence at the Inquiry as to the relative costs for refurbishment and demolition and rebuilding. The Objectors have asked for disclosure from Southwark Council to enable Mr Morrow to provide as assessment as to the comparative costs of refurbishment as opposed to redevelopment. As matters stand, the objectors put forward, on a preliminary basis, the following figures from the April 2005 BPTW report and the May 2005 Frost Associates report. Mr Morrow will say that some of the 2005 figures appear to be high. He will be able to comment further in the even that disclosure as to the sources of the figures is provided by the Acquiring Authority.

| Block | BPTW Cost | Frost-allowance for professional fees & management | Frost 10% Contingency | Total per dwelling |
|---|---|---|---|---|
| | | | | |
| Arklow | £50,865 | £7,713 | £5,858 | £64,436 |
| 120-149 Chartridge | £57,513 | £8,132 | £6,564 | £72,209 |
| Chiltern | £63,536 | £8,674 | £7,221 | £79,431 |

| Block | Frost Cost | Deduct enhancements-New stair and lift cores, CHP works (including preliminaries, fees and contingency) | Allowance for 10% further dilapidations since 2005 | Allowance for inflation-2005-2015 (Based on Spons tender price indices)-7% | Total per dwelling |
|---|---|---|---|---|---|
| | | | | | |
| Arklow | £64,436 | -£16,888 | £4,755 | £3,661 | £55,964 |
| 120-149 Chartridge | £72,209 | -£19,239 | £5,297 | £4,079 | £62,346 |
| Chiltern | £79,431 | -£22,472 | £5,696 | £4,386 | £67,040 |

145. The cost of building new dwellings as based on NHHT viability costs amount to £257,000, as detailed below (NB – Mr Morrow's rebuilding figures may differ from those provided by NHHT as the basis for the calculations has not been disclosed).

| Item | Total Cost | Cost per Unit (815 Units) |
|---|---|---|
| Construction | £ 145,694,204 | £ 178,766 |
| Professional Fees & Section 106 | £ 26,401,120 | £ 32,394 |
| Marketing & Lettig Fees | £ 5,128,565 | £ 6,293 |
| Finance | £ 5,724,484 | £ 7,024 |
| Profit | £ 26,828,808 | £ 32,919 |
| | £ 209,777,181 | £ 257,395 |

146. Refurbishment would ensure the wellbeing of the residents as it would provide approximately 650 good quality good-sized units in a refurbished environment as opposed to 815 smaller new-build units in a less-acceptable, denser, and ill lit environment.

147. Refurbishment would additionally improve the well-being of the area as Southwark Council would no longer be required to pay for demolition costs in the wake of the recent decision by NHHT to decline to do so. Furthermore, there are sound economic arguments for refurbishment in view of the excessive costs involved with the regeneration scheme and the funding shortfall. It is understood that Southwark has spent £46m for the redevelopment of 112 homes on the Aylesbury Estate (sites 7 and 1a) and has allocated £96m to the scheme over the next five years.

148. The Objectors will endeavor to adduce evidence to demonstrate that bringing existing homes on the Order Land ( in particular at the Chartridge and Chiltern blocks) the up to decent homes standard will cost less per dwelling than the amount that the Acquiring Authority is spending on redevelopment.

**Social and Environmental well-being – Architectural issues**

149. Furthermore, evidence will be given at the Inquiry from Dr Ben Campkin and Dr Richard Baxter to the effect that the architectural design of the Aylesbury Estate has been unfairly criticised by various commentators in relation to design as a cause of crime and anti-social behavour. The stigmatization of the Aylesbury Estate and similar developments has been un-warranted. It will be submitted that the social problems associated with the estate are better achieved through refurbishment and improvements to the existing fabric as opposed to dispersal of the community through regeneration and gentrification.

150. In particular, Dr Baxter's evidence relates to interviews conducted with estate residents as to the level of existing well-being on the estate.

151. The Roehampton Estate provides an example of similar architecture (slab blocks) being grade II listed. The Alton Area Masterplan report of October 2014 delivers ' a combination of the addition of well considered new buildings and directed enhancements to listed buildings'. NB – the listed buildings are similar in nature to those now on the Aylesbury Estate.

## 4. THE SCHEME IS NOT VIABLE

152. NPPF paragraph 173 states:

> ***Ensuring viability and deliverability***
> *173. Pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. Plans should be deliverable.*
> *Therefore, the sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.*

153. Paragraph 13 of the new DCLG guidance states that if an acquiring authority cannot show that all the necessary resources are likely to be available to achieve the use for which it is intending to acquire the land then it will be difficult to show conclusively that the compulsory acquisition of the land include in the order is justified in the public interest, at any rate at the time of its making. This echoes paragraph 19 of Circular 6/2004. The Objectors maintain that the Acquiring Authority is unable to demonstrate that it has secured the resources for the scheme.

154. Paragraph 14 of the new guidance states that an acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme. The acquiring authority should provide an indication of how any potential shortfalls are intended to be met, which will include the degree to which any 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. It is submitted that the

Acquiring Authority has failed to provide the necessary substantive information.

155. Paragraph 15 of the DCLG guidance states that the acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments. These include any need for planning permission or other consent or licence. The Objectors have noted that the acquiring authority intends to submit a revised planning application and that, as matters stand, there exists a legal impediment to the scheme proceeding. The funding gap and likely failure to obtain vacant possession of the building that is to replace Ellison House similarly present impediments.

156. The Objectors maintain that the scheme is not viable and rely on five main factors which weigh against the scheme's financial viability.

a) The Scheme was not viable in the first place
b) £180m of allocated government funding has been withdrawn since the AAAP was adopted
c) The government has cut the amount housing associations can charge for (social) rents and introduced a cap in Local Housing Allowance
d) NHHT has sought to resile from its obligations in relation to the FDS site, which has led to a greater financial outlay by the Acquiring Authority than anticipated by the AAAP.
e) Construction costs have been increased 10% annually since the Scheme was modelled and DPA signed in 2014. NB SPONDS process indicate 24.5% over 3 years from 2014 – 2017.

Not viable in the first place

157. Firstly (a), the January 2009 draft the draft Aylesbury Area Action Plan showed that there was a funding shortfall of £299m. The Inspector at the examination in public of Southwark's AAAP raised the issue of the substantial gap and the response of the Southwark Council was to reduce the gap to £169m. The Objectors assert that the drastic reduction has never been satisfactorily explained and that the reduction in the shortfall in relation to Leaseholder acquisitions from £130m to £65m may explain the failure of the Acquiring Authority to take reasonable steps to negotiate with the Leaseholders.

Withdrawal of Government funding

158. Secondly (b), The Acquiring Authority was expecting to cover the remaining £169m funding shortfall with government PFI funding and this satisfied the inspector at the Examination in Public. However, just under a year after the Area Action Plan was adopted, the government withdrew all PFI funding for the scheme. As a consequence of this withdrawal of £180m government funding envisaged by the AAAP and subsequent changes in housing policy have affected the viability of the Scheme.

159. At the previous inquiry NHHT claimed that it had applied for central government funding from the 'Estate Regeneration Fund'. The Acquiring Authority's updated Statement of Case also states that NHHT has 'applied' for funding from the same programme. The Objectors seek clarification as to whether this is the same application (that has taken over 3 years to process) or a separate application, the first having been rejected. Disclosed Southwark/ NHHT steering group notes confirm that funding will not be available from the Estate Regeneration Fund.

Introduction of social rents cap

160. Thirdly (c ), in 2015, the government introduced reforms to the amount of rent housing associations can charge under social rented tenancies in its Welfare Reform and Work Act 2016, forcing them to reduce social rents by 1% per year.

161. The Financial Times has reported that the changes could force housing associations into a financial crisis (article dated ……), explaining that according to Treasury forecasts landlords' rents will be 12 per cent lower than previously forecast by 2020-21. The Office for Budget Responsibility said the drop in rental income was likely to result in housing associations calling off plans to build 14,000 homes; the National Housing Federation said this figure was nearer to 27,000.

Conduct of NHHT in light of funding difficulties

161. NHHT's 2016 financial statement confirmed that "*Following changes announced by the Government in July 2015, we paused our start on sites to reassess scheme viability and to review our blend of tenures to reflect Government priorities .. Starts on site slowed down as we paused to reappraise the tenure split of schemes following the social rent cuts announced in the Government's summer budget.*"

162. As detailed at paragraph 52 above, in September 2016, the Acquiring Authority announced at a Cabinet meeting that "*the impact of measures in the Housing and Planning Act have reduced the ability of NHHT's Board to progress Phase 2 and Plot 18 at this stage*" (para 8) and that "*due to the costs*" and "*CPO delay*". The effect of this announcement is that NHHT is no longer willing to fund the demolition costs of the FDS notwithstanding that it was obliged to do so under the terms of the Development Partnership Agreement (DPA).

163. Paragraphs 8.10-8.11 of the Acquiring Authority's updated statement of case refers to the 'strength of robustness of NHHT's financial standing'. The Objectors submit that such robustness is a result of a tough commercial approach applied by NHHT's board to ensure that schemes are financially viable and offer a healthy operating margin before

proceeding. Paragraph 8.10 confirms that its average operating margin is 34% - this is nearly 10% above the industry average.

164. The DPA stipulates that NHHT must pay the demoliton costs in respect of the FDS (para 4.1.4), the demolition cost was subsequently to be deducted from the £16.3m total (of 3 fixed land payments £1.2m; £2.4m; £12.7m) - (para 1.2.2) that NHHT was supposed to pay the Acquiring Authority upon transfer of the land.

165. The effect of NHHT's refusal to carry out its obligations under the terms of the DPA means is that not only is the Acquiring Authority required to fund the £16.8m demolition costs itself plus a 2% management fee to NHHT, but it will only receive the third (and largest £12.7m) of the £16.3m fixed payments when the FDS development is completed in 2024.

166. In summary, the Acquiring Authority is now required to provide £16.8m, of which it will receive just £16.3m in return in at least 7 years' time - resulting in a net loss on the sale of 4.4 hectares of public-owned land.

167. The Acquiring Authority may argue that it has an 'overage agreement' in the DPA, meaning that it receives a percentage share of NHHT's 'overage' profit. However, such agreements bring notoriously uncertain results, as demonstrated by the Acquiring Authority's regeneration of the Silwood estate in Bermondsey that it redeveloped in partnership with NHHT. A similar agreement here resulted in an 'overage' payment of just £546,047 to the Acquiring Authority. An FOI request shows that there was disagreement between the parties about the amount of overage paid with the Acquiring Authority arguing that more overage

was due.

168. In total, Southwark agreed to fund £27m of the ongoing costs of progressing the scheme (over the next 3 years alone) that NHHT was originally required to fund under the terms of the DPA. These comprise:

- ◦ £0.8m for the demolition of Plot 18
- ◦ £16.8m demolition costs for the FDS
- ◦ £2m to underwrite the cost of Plot 18’s planning application
- ◦ £2m to underwrite the design fees for phase 2
- ◦ £5.5m to construct the replacement facility for Ellison House

- See September 2016 Cabinet report.

169. These costs are in addition to the Council’s other costs that it has already allocated to the scheme to pay for rehousing of tenants and buyback of leaseholders. In total, the Council is now forecast to spend £76.7m over the next five years on progressing decant and demolition, plus an additional £32.4m on the new community facilities that were supposed to be funded by the Acquiring Authority's delivery partner(s). (see para 8.14 of the AA's updated Statement of Case)

170. At the previous inquiry it was established that the Acquiring Authority had already spent £46m progressing the Scheme up to 2014. Evidence will be provided a the Inquiry that NHHT’s expenditure on the Aylesbury Scheme to date has been in the region of £1m.

171. These significant funding requirements were not envisaged at the time that the Acquiring Authority made the decision to progress the scheme. In the September 27th 2005 report to the Executive (Appendix C),

members were given costing estimates showing that the redevelopment would be more or less cost neutral to the Acquiring Authority over the duration of the Scheme.

172. Dr Robert Colenutt will give evidence on the issue of viability.

Well-being

173. Compulsory purchase orders issued under Section 226(1)(a) of the TCPA are subject to S226(1A) which sets out the "wellbeing" test. The Acquiring authority must not exercise the power unless it thinks that the proposed development, redevelopment or improvement is likely to achieve the promotion or improvement of the economic, social or environmental well being for its area.

174. The Objectors submit that the impact of the Scheme on the Acquiring Authority's Housing Investment Programme (HIP) budget (as a result of funding commitments not envisaged by the AAAP), should be considered as part of the 'wellbeing' test in relation to the order; i.e. that confirmation of the order would result in harm to the environmental well-being of circa 4,000 households in the wider area, whose homes do not meet minimum Decent Homes Standards (DHS) and will remain so because funding set aside for their refurbishment has been diverted to pay for demolition of the FDS - as a result of NHHT's refusal to continue demolition funding.

175. The conduct of NHHT impacts on the deliverability of the wider scheme.

176. A further impact of the drawing down funding from the HIP will result in there being less funding available for the estimated cost of £100m to install sprinklers in the Acquiring Authority's tower blocks,

recommended by a fire safety review following the Grenfell fire. It is anticipated that the installation of sprinkler systems could become mandatory following the Grenfell Inquiry.

**Increased construction costs**

177. Fifthly, as previously stated, the Objectors rely on an article in the Financial Times (dated……) , which confirms that construction costs in London have been spiralling since the DPA was agreed in April 2014, by as much as 10% per year.

178. The 'viability note' disclosed under FOI in March 2015, shows that the estimated construction costs alone for the FDS are £145m. – see table at paragraph 145 above.

179. It is understood from disclosed steering notes that NHHT's delivery partner, Barratt, has withdrawn from an agreement to deliver private homes on the site. The Objectors seek clarification on what grounds Barratt has withdrawn; if a replacement delivery partner has signed an agreement; the details of any such agreement and resulting cross subsidy expectations.

Wood Dene Estate – reasonable timeframe unlikely

180. The Objectors submit that the non-viability of the scheme may result in it not being delivered in a reasonable timeframe. The Wood Dene estate, an estate owned by the Acquiring Authority in Peckham, was demolished in 2007 and is due to be redeveloped by NHHT. However, the site has been left empty for 10 years without the building of any new homes. The

Objectors submit that this will be likely future of the FDS if the order is confirmed

181. The AAAP states that the FDS development would be completed by 2016. The DPA states that the FDS will be completed by 2021, but NHHT have stated that the development will be completed in 2024 (see September 2016 Cabinet Report). In the circumstances, it is submitted that there is no realistic prospect of the land being brought into beneficial use within a reasonable timeframe.

182. The Objectors note the council and NHHT assert that NHHT's obligations to develop the Order Land are not dependent on further "viability" tests. It is submitted that a number of factors, notably those dealt with at cabinet on 20 September 2016, go to the general issue of deliverability of the whole project, including the Order Land. Later phases of the project are much more at risk, given that they are subject to viability that there is nothing in the DPA compelling NHHT to complete any of the development phases should NHHT consider them to be unviable.

Ellison House

183. Inspection of the plans for the Ellison House replacement building, recently approved by Planning Committee, indicate that the building is to be constructed on part of the Foxcote low-rise block (or one of them, if more than one) on the Estate, in phase 2. The Objectors maintain that the Acquiring Authority is unable to demonstrate that it will obtain vacant possession of that site.

## 5. THE ACQUIRING AUTHORITY HAS FAILED TO ACT IN ACCORDANCE WITH ITS PUBLIC SECTOR EQUALITY DUTY

184. Sally Causer of the Forum for Equality and Human Rights in Southwark (FEHRS) will give evidence on this issue. The Acquiring Authority failed to comply with the public sector equality duty set out in section 149 of the Equality Act 2010 in failing to undertake an Equalities Impact Assessment in relation to the Leaseholders on the Estate. At the time of the making of the CPO there were about 200 resident leaseholders across the estate and there were about 40-50 in the Order land. In contrast to general tenants the leaseholders have not been the subject of any assessment as to their protected needs. Their position is different to the other residents because Leaseholders are not permitted to return to the footprint of the estate.

185. It is submitted that the Leaseholders are a protected group for the purpose of the Equality Act. They are more adversely affected by the regeneration scheme than any other group and their members predominantly comprise BME individuals and families – a protected group. No separate assessment has been made as to the ethnic constitution of the tenants as opposed to the leaseholders. Further, no assessment was made as to the whether the Aylesbury leaseholders would fare worse than homeowners on other estates who did not share the same protected characteristic. Depriving a BME homeowner of his/her home requires an assessment of whether that homeowner would be more adversely affected that one from a non predominantly BME estate. Beverley Robinson gave compelling evidence to the Inquiry in 2015 as to the BME community that settled on the Estate and the cultural advantages that she derives from living in the there. Furthermore, gender issues arise as the majority of the remaining Leaseholders are women.

186. Furthermore, the Acquiring Authority cannot reasonably rely on the 2009 AAAP equality impact assessment, which was commissioned at a time when Leaseholders benefited from a rehousing policy which provided 'like for like' property exchanges with no financial cost to the Leaseholder.

187. The Objectors submit that the Leaseholders face adverse consequences, which may not be faced by non BME homeowners.

(i) The leaseholders have no right of return. They face forced separation from their communities, which in many cases may result in difficulty in retaining contact with a particular culture.

(ii) The leaseholders are likely to have more substantial community ties to the area that tenants, due to the permanence of their tenure.

(iii) The displacement of communities who constitute the intended beneficiaries of regeneration schemes raises diversity issues. Dr Campkin will give evidence on this issue.

## 6 HUMAN RIGHTS CONSIDERATIONS

188. Article 8 of the ECHR provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

"2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

52 Article 1 of the First Protocol to the ECHR is in the following terms:

*"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*

189. The human rights of the leaseholders have not been properly considered by the Acquiring Authority. The Objectors rely on Articles 1 (right to quiet enjoyment of property) and 8 (right to respect for private and family life) ECHR. Both are qualified and subject to proportionality.

**Beverley Robinson**

190. The situation of Beverley Robinson illustrates the human rights arguments. Ms Robinson's human rights will be breached by the Order because she will be deprived of her home. Ms Robinson has lived in her flat for 29 years and purchased a long lease of it under the council's right to buy scheme. She proceeded with the transaction to purchase her lease in 2003 after 73% of those balloted in 2001 voted against demolition and in favour of refurbishment. Consequently, she had a reasonable expectation in 2003 that she was purchasing a home for life, so as to enable her to make other financial provision for her future.

191. Ms Robinson's social life is largely consequent on where she lives and she has many friends who live on the estate and in the surrounding area. She has close family ties in the area.

192. Ms Robinson has been employed as a customer services manager for Royal Mail. She is currently undertaking voluntary work on a temporary basis and lives on her savings as those savings preclude her from receiving benefits. She has no mortgage. Under the Council's policy her savings and financial well being will be compromised, notwithstanding the abandonment by the Council of its £16,000 policy.

193. Ms Robinson relies upon a statement from Alan Shaw, her surveyor, who states that Southwark Council refuse to consider 'off estate' transactional evidence in the valuation of property. This is a problematic approach because the sale prices of the comparables are affected by the scheme.

194. As a homeowner Ms Robinson is required to provide the local authority with details of all of her bank accounts; all other investments; all items of property; salary, pensions, benefits; personal expenditure and household costs. It is submitted that this amounts to an intrusive financial assessment, to which non leaseholders are not subjected.

195. Ms Robinson believes that her home will be taken away from her in circumstances where she will be required to sell it at a substantial undervaluation. She was originally informed by Southwark Council that she would be permitted to return to a building on the redeveloped site, but has since been informed that she has no right to return.

196. In relation to the right to return, the justification given by the Council in a rebuttal statement dated 9 October 2015 is that “ Leaseholders do not have the formal right to return to the estate, in the way that Council tenants do. This is because, unlike Council tenants, having exercised the choice to purchase their home, they are then subject to the constraints of homeownership. Any subsequent move back onto the estate would necessitate additional subsequent costs in conveyancing fees, stamp duty, removals and so on, which it would not be reasonable to expect the Council to fund.”

197. The logic in the council’s position is flawed and disproportionate. If the leaseholder is entitled to purchase new Notting Hill leasehold properties nearby, despite the potential equity difference, there is no fundamental difference to the right to return being permitted with the same expenditure provided by the Acquiring Authority or the developer.

*198.* The refusal by the Acquiring Authority to permit Leaseholders to return to the footprint of the estate or to re-introduce the ‘like for like’ policy is disproportionate. Southwark Council has previously sought to justify its withdrawal of the ‘like for like’ policy in terms of that policy having restricted choice. Yet any such restrictions were brought about as a consequence of the Council’s systemic undervalue of properties which ae scheduled for demolition. Insofar as this has been brought about by the Acquiring Authority, the conduct of Southwark Council has been disproportionate.

199. Ms Robinson would be anxious to retain her home in the event of refurbishment or to the footprint of the estate in the event of regeneration. She bought her property for its views and values those views. Ms Robinson is happy to decant while her while new home built. Her sisters live within walking distance, one of whom is in ill health. Ms Robinson does not wish to walk around Burgess Park at night in order to visit her sister.

*200.* Ms Robinson maintains that the Acquiring Authority acts contrary to Articles 8 and the first protocol of Article 1 ECHR in requiring her to lose her home.

**Agnes Kabuto**

*201.* Ms Kabuto will give evidence to the Inquiry. She will say that she has been told by Southwark Council that she does not qualify for council assisted options as she does not meet affordability criteria. Ms Kabuto owns 100% of her property on the Aylesbury Estate. She cannot afford to buy another property in the area and is not in a position to obtain a mortgage. She would not be able to acquire 100% of a property in the area and states that, absent 100% ownership in the event of her death, she would be unable to pass property on to a relative. Ms Kabuto has a disabled mother who is unable to properly access her property due to the entrance gate being permanently locked. Ms Kabuto would be forced to move away from her grandchildren in the event that the CPO is confirmed.

202. The Council's position at paragraph 10.7 in its case statement has been that the advantages and benefits of regeneration for the wider community substantially outweigh the acknowledged disadvantages to those who will be dispossessed of their rights in the Order Land if the Order is confirmed. This approach should be rejected. The conduct of the Acquiring Authority in failing to properly address the rights of Leaseholders is disproportionate. Furthermore, the steps that should be taken to redress the Leaseholders, namely (i) addressing the affordability gap, (ii) permitting a right of return to the estate and (iii) re-introduction of the 'like for like' policy are entirely proportionate.

203. Joy Nyack Binns will give evidence to the Inquiry. She has been a resident on the Aylesbury Estate for over 19 years and reies on the Afro Carribbean hair and beauty salon. She is a part of the local community and states that she will be forced to lose her home and ties to her community should the CPO be confirmed and the regeneration proceed on the basis advanced by the Acquiring Authority.

204. Further evidence in respect of the disproportionate effects of dispersal will be given by Joy Nyack Binns, Felix Badu, Victoria Biden and others (mainly non-statutory objectors) ,

## 7. TENURE AND SOCIAL HOUSING ISSUES

205. The AAAP requires 37.5% of all new homes to be social rented tenure It is understood that NHHT is funding the social rented homes on the FDS with a grant from the GLA's Affordable Housing Program 2016-2021. The GLA's funding agreement for this program does not provide for social rent. Instead it offers funding for a tenure named 'London Affordable Rent' (LAR).

The funding agreement makes it clear that this is effectively Affordable Rent tenure and subject to regulations and legislation governing Affordable Rent ( see paragraph 10.1 of that agreement). There is a conflict between the social rent to be delivered under the AAAP and the affordable rent for which the developer has sought funding.

206. This formula conflicts with the formula for the setting of social rents prescribed in the Rent Standard Guidance and will result in LAR rents increasing proportionally by more than social rents year on year, as social rents are required to be reduced by 1% each year (see section 23 of the Welfare, Reform and Work Act 2016).

207. LAR tenure is not social rented tenure required by the AAAP, it is subject to different regulation and legislation (enabling fixed-term rather than secure tenancies, pay to stay, etc).

208. LAR rents are currently set at £144 p/w (1 bed); £152 p/w 2 bed; £161 p/w (3 bed) 2017-2018 baseline. These weekly rents are exclusive of service charges.

209. The £180 million shortfall occasioned by the Government's 2010 decision has led to a loss of affordable housing due to the reduction in the number of dwellings that are now to be built. The Acquiring Authority acts contrary to Policy 3.14 of the London Plan. The shortfall has not been made good through replacement with equivalent floorspace. The Mayor's draft Good Practice Guide states that 'demolition should only be followed where it does not result in a loss of social housing'. The failure of the Acquiring Authority and NHHT to adhere to the guide may adversely affect the outcome of the current application for GLA funding. Furthermore, the AA appears to have failed to comply with the 50% tenant rehousing policy as per AAAP paragraph 7.2.6.

210. The AAAP requires 50% affordable housing of which 75% is social rented tenure. Having established that the 'double counting' small print in the section 106 agreement fails to secure this, the Acquiring Authority may argue that social rented tenure is guaranteed by provisions of the DPA, but the DPA refers only to 'target rent'. There is no mention in the entire DPA of the term 'social rent'. 'Target rent' is not a recognised affordable housing tenure, but a term that has been used in previous rent guidance to enable the convergence of council and housing association rents. Evidence in this respect will be given in writing by London Tenants Federation.

211. The FDS planning consent permits 51.3% affordable housing ( Table 15, Officer's report) (although it is in Phase 1, where AAAP BH3 requires 59%). A Financial Viability Note for the FDS states that 'It would not be viable to provide more affordable housing within this application' and concluded emphatically 'increasing the number of affordable homes within the FDS mix would result in the scheme falling below the prudent profit level for NHHT, given the high level of development risk on this project' (NHHT Financial Viability Note 4 Mar 2015 – obtained by FOI request).

212. Notwithstanding the Viability Note NHHT has submitted an amendment (17/AP/3885) to the FDS planning permission (14/AP/3843) which increases the amount of affordable housing by 153 units (37%). This is off-set somewhat by a proposed amendment and reduction in the amount of affordable housing on another plot, Plot 18 (16/AP/2800) but together the changes still amount to a net increase of 120 affordable units, (26%). NHHT gives no explanation of how such an increase can be sustained, while keeping the scheme viable, in the Supporting Statement. No viability assessment of the impact of the change has been submitted. (Table 4. GL Hearn Supporting Statement)

213. Paragraph 4.8.4 on page 136 of the DPA states that the agreement may terminate if the develop shows non viability in respect of a particular

phase. Southwark Council's risk register states at appendix 2 , mitigation, point 4 that ' if an individual phase or plot cannot be made viable then the development will not proceed.'

214. Paragraph 4.8.6 of the DPA states that both parties will be free to terminate the DPA if phases are deemed unviable.

215. In 2010, the Acquiring Authority signed a development partnership agreement for the redevelopment of the neighbouring Heygate estate. The contractual agreement required the developer to provide a minimum of 12.5% social rented housing. The Objectors will give evidence to the effect that the developer in that scheme claimed this was not viable and is now providing just 3% social rent as a result. It is submitted that that, in view of the current funding uncertainty, this situation is likely to be repeated in respect of the Aylesbury scheme.

216. The Objectors submit that in the absence of dedicated government funding to replace the PFI funding anticipated at the time the AAAP was drafted, the minimum 37.5% social rented housing across the Aylesbury scheme us undeliverable.

217. The Objectors submit that if the Order as it stands is confirmed, then the shortfall will be made up both by continuing to shortchange leaseholders and passing off affordable rented tenure as social rent.

218. This has indeed been the fate of several other schemes completed by NHHT. Evidence was given at the previous inquiry to the effect that NHHT

had delivered affordable rented homes at up to 62% market rent at its Bermondsey Spa regeneration, when social rent was agreed in the DPA, planning committee report and section 106 agreement.

219. The same is true of NHHT's regeneration of the Claremont East estate in neighbouring Lambeth. This was sold by Lambeth Council to NHHT on the basis that it would provide "100% social rented housing".

220. However, NHHT later submitted a viability assessment claiming that it was no longer possible to provide this and Lambeth agreed to lower the quota. In March 2011, Lambeth granted planning permission for just 40% affordable housing, of which is 70% social rented. GLA housing delivery data shows that these have been delivered at affordable rent between 67-68% market rent.

221. In July 2017, NHHT announced a merger with Genesis Housing association, the new group will become 'Notting Hill Genesis Housing Association'. Genesis Housing is similar in size to NHHT and employs a simliar profit-driven approach. In August 2015 it announced that it would no longer be building social housing and that it would be considering selling or raising the rents on its existing social homes once they become vacant. (See Guardian article 7 August 2015). Genesis has been criticised by a Local Government Onbudsman in relation to the Grahame Park Estate in Barnet for failing to provide social rented housing – see also decision relating to Aylesbury Estate.

222. The Objectors submit that the non-viability of the scheme will result in NHHT delivering affordable rent instead of social rent. At the previous inquiry, the Acquiring Authority argued that this would be prevented by the terms of the section 106 agreement requiring social rent rather than affordable rent. The Objectors responded that this was also the case at with the Bermondsey Spa regeneration where the Acquiring Authority had failed to monitor delivery and subsequently failed to enforce the terms of its section 106 agreement once the breach had been pointed out by the 35% Campaign.

## 8. EFFORTS TO SECURE BY AGREEMENT

223. The Objectors rely on paragraph 402 of Inspector Coffey's report and maintain that the Acquiring Authority has failed to demonstrate that it has taken reasonable steps to acquire the Leaseholder's interests by agreement. The Acquiring authority has failed to act in accordance with paragraph 3 of the Guidance which states that in order to reach early settlements they are expected to make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant (see paragraph 397 of the Inspector's report).

224. Paragraph 402 of the Inspector's report states as follows:

*I acknowledge that suitable alternative properties are available. However, in practice the options for most leaseholders are either to leave the area, or to invest the majority of their savings in a new property. Having regard to the age CPO and financial circumstances of many of the leaseholders both options would have significant social and economic implications for*

*their well-being. I do not consider that the Council has taken reasonable steps to acquire leaseholder properties by agreement.*

225. It is submitted that the finding of the Inspector on this issue should stand, notwithstanding the cancellation of the £16,000 policy. The Objectors reject any allegation that Southwark Council took reasonable steps in relation to offers made at sites 1a and 7 and aver that no such reasonable steps have been taken since the conclusion of the 2015 Inquiry. Beverley Robinson and Agnes Kabuto will give evidence on these points.

226. Whilst the amount of compensation is not a matter for the Secretary of State, the reasonableness of offers made will be relevant because these go to the a question of affordability of the shared equity product. The Objectors will give evidence at the Inquiry as to the offers that they have received and why, for various reasons and in the absence of a like for like policy, those offers have been inadequate.

**CONCLUSION**

227. In all the circumstances, the Order should not be confirmed for the reasons set out above. The 2015/2016 proceedings highlighted the failure of Southwark Council to address the position of Leaseholders within an urban regeneration scheme. The same issues arise at the second Inquiry. It is submitted that the position of Leaseholders gives rise to human rights arguments and other material considerations which the Acquiring Authority has not satisfactorily addressed.

228. It is further submitted that the Order cannot be confirmed because the Inspector's findings in relation to environmental well- being should stand.

229. The Objectors will call witnesses to provide evidence in support of their objections and reserve the right to call rebuttal evidence in relation to any further assertions and evidence produced on behalf of the Acquiring Authority.

230. The current list of witnesses for the objectors is as follows:

1. Professor Loretta Lees
2. Anna Minton
3. George Turner
4. Dr Robert Colenutt
5. Dr Ben Campkin
6. Dr Richard Baxter
7. Professor Jane Rendell
8. Simon Morrow
9. Rastko Novaković
10. Sally Causer
11. Beverley Robinson (statutory objector)
12. Agnes Kabuto (statutory objector)
13. Joy Nyack Bins ( Non statutory objector)
14. Victoria Briden ( Non statutory objector)
15. Felix Badu ( Non statutory objector)
16. Maurizo Piga ( Non statutory objector)
17. David Bailey and parents ( Non statutory objectors)
18. Angel Akins-Andoh ( Non statutory objector)
19. Stephen Dogbaste ( Non statutory objector)
20. Richard and Mary Osei-kumaning ( Non statutory objectors)
21. Wesley Von Evans ( Non statutory objector)

CHRISTOPHER JACOBS

10 NOVEMBER 2017