

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
CLAIM NO. HC-2015-002333

BETWEEN:

LONDON BOROUGH OF SOUTHWARK
Claimant

and

(1) LONDON DISTRICT HOUSING
ASSOCIATION LIMITED
(2) HARTLEY APARTMENTS LIMITED
(3) JAM FACTORY APARTMENTS LIMITED
AND OTHERS

Defendants

RE-AMENDED PARTICULARS OF CLAIM

The London Borough of Southwark,
160 Tooley Street,
London,
SE1 2QH
Ref: RR020/63785(ES)

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and

- (1) LONDON DISTRICT HOUSING ASSOCIATION LIMITED
(2) HARTLEY APARTMENTS LIMITED
(3) JAM FACTORY APARTMENTS LIMITED
(4)-(7) NOT PROCEEDING
(7) SILVERSTREAM FINANCE (HAMPSTEAD) LIMITED
(8)-(18) NOT PROCEEDING
(19) SHELLEY CLAIRE COOK
(20)-(38) NOT PROCEEDING
(39) PROTECTED GROWTH PLAN LIMITED

Defendants

RE-AMENDED PARTICULARS OF CLAIM
PURSUANT TO ORDER OF CHIEF MASTER MARSH
DATED 2 JUNE 2016

The amendments

1. These amended particulars of claim served pursuant to the Order of Chief Master Marsh dated 17 March 2016 replaced the particulars of claim dated 3 June 2015 in their entirety.
2. In summary, the Claimant:

- a. maintains its claims against Defendants 1-3 and 7 and advances substantial additional grounds for these claims;
- b. discontinues its claims against Defendants 4, 5, 6, 8 and 9;
- c. no longer has a claim against Defendants 11 or 10, which were dissolved on 6 October and 9 December 2015 respectively;
- d. advances substantial additional claims against new Defendants 12-38; and
- e. in view of the substantial nature of the amendments and in the interests of simplicity of presentation, these amended particulars of claim ~~do~~ did not show the original text, whereas the re-amendments are shown in green; and
- f. by the re-amendments, the Claimant adds additional claims against new Defendant 39.

Glossary

3. The following definitions will be used:

"Affordable Housing"	as defined in the S106s
"the AHUs"	the Jam Factory Flats, South City Court Flats and Wanley Road Flats, designated as affordable housing units
"the Developers"	the freehold owners and developers of the Sites, namely as follows Jam Factory: Angel Property (Jam Factory) Limited South City Court: Packamist Limited Wanley Road: Leaf Lane LLP
"the Head Landlords"	in respect of the Jam Factory Dunbar Assets plc (formerly known as Dunbar Bank plc) and in respect of South City Court and Wanley Road the Developers
"the Head Leases"	separate head leases of each AHU granted by the Head Landlord to LDHA
"Intermediate Rented Terms"	as defined in the S106s

"Jam Factory"	Blocks A, B, C The Jam Factory, 27 Green Walk, London SE1 4TT, SE1 4TX and SE1 4TQ respectively and Block D, The Jam Factory, 21a Rothsay Street London SE1 4BF
"Jam Factory Flats"	Flats 1-18 at Block D, the Jam Factory, the AHUs at the Jam Factory
"LDHA"	the First Defendant (formerly known as Faithland Housing Association Limited)
"the Nominees"	Defendants 12-20 (Jam Factory 1-9 Nominees); Defendants 22-24 (South City Court Nominees); Defendants 25-33 (Jam Factory 10-18 Nominees); and Defendants 34-38 (Wanley Road Nominees)
"the PGP Companies"	PGP Finance No. 5 LP (former Defendant 10); PGP Jam Factory Limited (former Defendant 11); PGP Finance No. 7 LP; and PGP Finance No. 12 LP
"the S106s"	S106s referred to at para 10 below
"Shared Ownership Clauses"	a description of the Sub-leases as "shared ownership lease", particulars recording an initial percentage, specified rent and premium and shared ownership terms for staircasing, nominated purchasers and pre-emption contained within and in particular at schedules 1, 3 and 4 of some of the Sub-leases
"Shared Ownership Terms"	as defined in the S106s
"the Sites"	Jam Factory, South City Court and Wanley Road
"South City Court"	Ground Floor, South City Court, 52 Peckham Grove, London SE15 6AB
"South City Court Flats"	Flats 34-36 and 43, Ground Floor, South City Court, the AHUs at South City Court

"the Sub-leases"	separate sub-leases of each AHU for a term of 125 years or thereabouts granted by LDHA purportedly to the Nominees
"Wanley Road"	44 Wanley Road, now known as 67 Green Dale, London SE5 8JZ
"Wanley Road Flats"	Flats 1-5, Wanley Road, the AHUs at Wanley Road

A reference to a document such as a lease includes where applicable a reference to its counterpart.

And a reference to a numbered "**Appendix**" in bold is a reference to an appendix hereto.

4. For the sake of brevity the following acronyms will be used:

- "AHO" affordable housing obligation to use the AHUs as Affordable Housing
- "HCA" the Homes and Communities Agency established under Part 1, Housing and Regeneration Act 2008, a successor body to the Housing Corporation with effect from 1 December 2008
- "MVP" a market value purchaser of an AHU
- "RP" registered provider of social housing within the meaning of section 80(2), Housing and Regeneration Act 2008
- "S106" agreement containing planning obligations under section 106(1), TCPA made between the Developer and the Claimant as local planning authority and executed by them as a deed
- "SOLE" shared ownership lease exception to AHO
- "TCPA" the Town and Country Planning Act 1990

Background and parties

5. This claim concerns three housing developments at the Jam Factory, South City Court and Wanley Road, in respect of each of which:

- a. the Claimant granted planning permission;
- a. the Developer, its mortgagees and the Claimant made a S106;
- b. the S106 imposed an AHO; and
- c. LDHA is and was at all material times head lessee of the AHUs.

6. The AHOs were imposed in accordance with:

- (i) the development plan at the time of the grant of each planning permission, namely the London Plan (consolidated with alterations 2008) and the Southwark Plan (2007) for the Jam Factory and South City Court, and the London Plan (2011), the Southwark Core Strategy (2011) and saved policies from the Southwark Plan for Wanley Road, which identify that the provision of affordable housing is a key strategic and local planning objective;
- (ii) national planning policy as set out in the National Planning Policy Framework (NPPF March 2012) in particular at paragraph 47, which requires local planning authorities to boost significantly the supply of housing in their areas to meet the full objectively assessed needs for both market and affordable housing, where possible, and at paragraph 50 which advises that policies should in the first place seek for affordable housing to be provided on site to contribute to the objective of creating mixed and balanced communities; and
- (iii) the Claimant's adopted Affordable Housing Supplementary Planning Document (2008) which assists the Claimant in the application of government guidance and the determination of planning applications and which states both that there is a shortage of affordable homes in Southwark, London and across the country and that all housing including affordable housing should be located on the development site save in exceptional circumstances.

7. At all material times LDHA has been a RP, Phillip Butt was its Chairman and Fraser Allen was its Estates Manager.

8. At all material times the PGP Companies, PGP Finance No. 5 LP (former Defendant 10), PGP Jam Factory Limited (former Defendant 11), PGP Finance No. 7 LP and PGP Finance No. 12 LP, carried on the business of property holding and/or investment for profit. PGP Jam Factory Limited was dissolved on 6 October 2015; the other PGP Companies were dissolved on 9 December 2015. The directorships and shareholdings of Terry Godrick McMillan in relation to the PGP Companies, are set out at **Appendix 1**. In particular, Terry McMillan is and/or was at the material times:

- a. sole director of and 100% shareholder in Protected Growth Plan No. 5 Limited, which from registration until 1 March 2010 was a general partner of PGP Finance No. 5 LP;
- b. sole director of Protected Growth Plan Limited, Defendant 39, which from 1 March 2010 until 11 May 2015 was a general partner of PGP Finance No. 5 LP, prior to 11 May 2015 was a general partner of PGP Finance No. 7 LP, and prior to 3 August 2015 was a general partner of PGP Finance No. 12 LP;
- c. from 7 May 2015 sole director of and 100% shareholder in PGP Realisations Limited, which on the above dates replaced Protected Growth Plan Limited as general partner of PGP Finance No. 5 LP, PGP Finance No. 7 LP and PGP Finance No 12 LP until their dissolution on 9 December 2015;
- d. from 28 April 2014 until its dissolution on 6 October 2015 sole director of and 100% shareholder in PGP Jam Factory Limited;
- e. sole director of and 100% shareholder in PGP Investors Limited, which was a limited partner of PGP Finance No. 12 LP until its dissolution on 9 December 2015; and
- f. in respect of each of the above directorships of Terry McMillan his stated address at Companies House was Studio One, 197 Long Lane, London SE1 4PD; and further

- g. at all material times from 29 October 2010 David Edward Property & Development Limited was a designated member of PGP Securities No. 5 Limited;
- h. at all material times Terry McMillan was sole director of and 100% shareholder in PGP Securities No. 12 Limited;
- i. Terry McMillan owns a 90% shareholding in and Sheron McMillan his wife owns a 10% shareholding in The Trademark Group Limited, of which among other companies the following are wholly owned subsidiaries:
 - i. Trademark Property & Investments Limited;
 - ii. David Edward Property & Development Limited (a wholly owned subsidiary of Trademark Property & Investments Limited); and
 - iii. Protected Growth Plan Limited, Defendant 39, (a wholly owned subsidiary of David Edward Property & Development Limited); and
- j. at all material times Terry McMillan has been the sole director of Trademark Property & Investments Limited, David Edward Property & Development Limited and Protected Growth Plan Limited, Defendant 39;
- k. accordingly, in respect of the transactions set out below PGP Finance No. 5 LP, PGP Finance No. 7 LP and PGP Finance No. 12 LP acted under the control of Protected Growth Plan Limited, Defendant 39, and Terry McMillan; and at all material times from 28 April 2014 PGP Jam Factory Limited acted under the control of Terry McMillan.

The S106s

- 9. The Claimant granted planning permission for the developments at the Sites on the following dates:
 - a. Jam Factory: 27 February 2009;
 - b. South City Court: 8 February 2010; and
 - c. Wanley Road: 14 December 2012.

10. The S106s were as follows:

- a. Jam Factory: dated 27 February 2009 made between the Claimant, Angel Property (Jam Factory) Limited and Dunbar Assets plc and others, as varied by a unilateral undertaking dated 28 October 2010 made between the Claimant, LDHA and PGP Securities No. 5 LLP;
- b. South City Court: dated 5 February 2010 made between the Claimant and Packamist Limited, as varied by an agreement dated 20 March 2012 made between the same parties; and
- c. Wanley Road: dated 14 December 2012 made between the Claimant and Leaf Lane LLP.

Copies thereof are at **Appendix 2**. The Claimant will refer to the S106s at trial for their full terms and effects.

11. Each S106 provided at clause 2.1 that the obligations within it were entered into pursuant to section 106, TCPA and were enforceable against successors in title. Although each S106 differs in its precise terms, the terms in issue are similar. These comprise an AHO and, as an exception thereto, a SOLE.

12. The AHOs and SOLEs are contained in:

- a. Jam Factory: clauses 4.4.1, 4.4.2 as varied by the unilateral undertaking dated 28 October 2010 and 10.1.5;
- b. South City Court: clause 4.1, schedule 2, para 1.4 and clause 7.1.6; and
- c. Wanley Road: clause 4.1, schedule 2, para 1.2.5 and clause 7.1.3.

AHO

13. Each S106 provided that the Developer was to construct the AHUs and to grant a long lease of the AHUs for a term of at least 125 years and on completion to hand over the AHUs to a RP (Jam Factory clause 4.1; South City Court and Wanley Road schedule 2, para 1.2).

14. In each S106 the AHO was expressed materially in the following terms and with the following variations:

“...the Affordable Housing Units [will/shall] not be used for purposes other than **[Shared Ownership Units]** providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark...”

“Will” or “shall” is a variation of language that makes no difference of substance. The emboldened words in square parentheses above appeared only in the Wanley Road S106.

15. Each AHO at clause 1.1 incorporated a detailed definition of “Affordable Housing”, the essence of which was as follows:

“Housing let on terms attainable for households which cannot afford to buy or rent locally on the open market...”

And in particular such terms should be:

“...attainable for purchase, or rent by households whose total gross annual income does not exceed £29,192 **[£31,074]** in respect of [all] 1 bed dwellings or £35,228 **[£36,716]** in respect of [all] 2 bed dwellings or £36,657 **[£42,621]** in respect of [all] 3 bed dwellings or £43,300 in respect of [all] 4 bed dwellings and in all cases whose total annual expenditure upon rent, mortgage and service charge does not exceed 40% of net household income.”

The figures in bold in square parentheses were those stated in the Wanley Road S106. All figures were subject to annual review as provided in the S106s.

16. Clause 4.4.2 of the Jam Factory S106, as varied by the unilateral undertaking dated 28 October 2010, provided that the AHUs:

"...will be offered on Shared Ownership Terms ... on Intermediate Rented Terms, or Intermediate Rented Terms with an option for tenants to purchase the unit on Shared Ownership Terms at a later date."

17. Further:

- a. in the Jam Factory S106 the clause 1.1 definition of "Affordable Housing" provided that in the case of Shared Ownership Housing it should refer to accommodation "disposed of on Shared Ownership Terms";
- b. in the South City Court S106 the clause 1.1 definition of "Affordable Housing Units" provided that they "shall be made available either on Intermediate Rented Terms or Shared Ownership Terms"; and
- c. in respect of the Wanley Road S106 the clause 1.1 definition of "Shared Ownership Units" incorporated a definition of "Shared Ownership Terms";

Shared Ownership Terms

18. In the S106s at clause 1.1, "Shared Ownership Terms" was defined as follows:

"a lease of an Affordable Housing Unit [**substantially**] in the form of the Housing Corporation [**Homes and Communities Agency**] standard lease of a type described in paragraph (a) of the definition of 'disposal on shared ownership terms' in Section 2(6) of the Housing Act 1996".

The emboldened words in square parentheses above appeared only in the Wanley Road S106. Other minor variations in the wording of the above definition are not material.

Intermediate Rented Terms

19. In the Jam Factory and South City Court S106s the definition of "Affordable Housing" contained as an alternative to Shared Ownership Terms "Intermediate Rented Terms", defined at clause 1.1 as follows:

"...let on an Assured Shorthold Tenancy by a Registered Social Landlord at a rent below market rent, above social housing target rent and affordable by households as defined under the Affordable Housing definition of this agreement."

SOLE

20. In each S106 the SOLE provided that the AHO was not binding on:

"...any tenant [**staircasing/Staircasing**] to 100% pursuant to a shared ownership lease [and their successors in title and mortgagees]"

The first emboldened alternative "staircasing" appeared in the Jam Factory S106. The second emboldened alternative "Staircasing" appeared in the South City Court and Wanley Road S106s.

21. In the South City Court and Wanley Road S106s the definition of "Staircasing" at clause 1.1 incorporated the definition of "Shared Ownership Terms" and also required that the relevant staircasing arrangements should have been agreed by the Claimant.

Construction and effect

22. The Claimant contends that:

- a. use as Affordable Housing is a "use" of land within the meaning of section 106(1), TCPA;
- b. it is immaterial that the definition of such use may include or have the effect of imposing requirements as to the circumstances of the occupiers of the land;
- c. the Jam Factory and South City Court S106s imposed an obligation to dispose of the AHUs either on Shared Ownership Terms or on Intermediate Rented Terms (and not otherwise);

- d. the Wanley Road S106 imposed an obligation to dispose of the AHUs on Intermediate Rented Terms (and not otherwise);
- e. such restrictions as to the terms on which the land was to be disposed were requirements to use the land in a specified way and/or ancillary to the restriction of use to Affordable Housing; and
- f. the respective AHOs, including the above restrictions as to the terms of disposition, are planning obligations enforceable against materially the Developers and Dunbar Assets plc and any person deriving title under them.

23. Further or alternatively, the Claimant contends that:

- a. although the AHO is expressed in negative terms, i.e. not to use the AHUs otherwise than as Affordable Housing, on a proper construction of the S106 as a whole and as a matter of substance it requires use of the AHUs as Affordable Housing;
- b. in the alternative, the above is a term to be implied into the S106s in order to give them business efficacy; in particular, the contrary construction would permit the Developer to make arrangements to leave the AHUs vacant and in consequence to sell the remaining units at the Sites at a higher price or let them at a higher rental, defeating the overall object of the AHO;
- c. the above obligations to dispose of the AHUs on Shared Ownership Terms and/or Intermediate Rented Terms were ancillary to the requirement to use the AHUs as Affordable Housing; and
- d. for these reasons also the respective AHOs, including the above restrictions as to the terms of disposition, are planning obligations enforceable against materially the Developers and Dunbar Assets plc and any person deriving title under them.

24. On a proper construction of each S106 "Shared Ownership Terms" referred to:

- a. the HCA standard Shared Ownership Flat Lease current at the date of the S106 (edition dates October 2008, September 2009 and September 2011 respectively); and
- b. a lease in accordance with the definition of "disposed of on shared ownership terms" in section 2(6)(a), Housing Act 1996, namely, granted on a payment of a premium calculated by reference to a percentage of the value of the house or of the cost of providing it.

25. On a proper construction of the S106s read as a whole they were conditions of triggering the SOLE that:

- a. the shared ownership lease in question should have been granted in compliance with the AHO;
- b. therefore, the shared ownership lease should have been granted on Shared Ownership Terms providing accommodation for a household in need of Affordable Housing in the London Borough of Southwark; and
- c. in respect of South City Court and Wanley Road S106s the relevant staircasing arrangements should have been agreed by the Claimant.

26. Further, the Claimant contends that:

- a. a lease granted on payment of a premium calculated by reference to 100% of the value of the flat is not a shared ownership lease that triggers the SOLE;
- b. a lease, even a lease on Shared Ownership Terms, granted to an individual who could afford to purchase at full market price is not a shared ownership lease that triggers the SOLE;
- c. a lease, even a lease on Shared Ownership Terms, granted to a commercial organisation is not a shared ownership lease that triggers the SOLE;
- d. further, it follows from one or more of the above propositions, that in order to trigger the SOLE the shared ownership lease in question must have been granted to an individual in need of Affordable Housing, hence there must

- have been a period of use as Affordable Housing by the lessee prior to the lessee staircasing to 100%; and
- e. in the alternative, the above are terms to be implied into the S106s in order to give them business efficacy; in particular:
 - f. it would make a nonsense of the AHO if it could be brought to an end by the grant of a shared ownership lease:
 - i. to an individual who could afford to purchase at full market price or a commercial organisation; and/or
 - ii. which was staircased to 100% on or before the grant of the lease or prior to occupation of the AHU as a residence; and further
 - g. the SOLE should be construed as limited to provisions having a business or commercial purpose and as not being triggered by elements inserted into a composite transaction without any business or commercial purpose other than triggering the exception.

The Head Leases

- 27. At each Site the Head Landlord granted LDHA a separate Head Lease in respect of each AHU.
- 28. At the Jam Factory, Dunbar Assets plc granted Head Leases dated 28 October 2010 to LDHA for a term of 999 years. It is the proprietor of a legal charge dated 4 June 2004 over the freehold title of Angel Property (Jam Factory) Limited, which entered into compulsory liquidation on 26 April 2010.
- 29. By a legal charge dated 28 October 2010 LDHA charged the Jam Factory Head Leases in favour of PGP Securities No. 5 LLP.
- 30. At South City Court, the Developer granted Head Leases dated 5 November 2012 to LDHA for a term of 999 years.

31. At Wanley Road, the Developer granted Head Leases dated 9 May 2014 to LDHA for a term of 125 years.

32. The Claimant believes that the Head Leases of the Wanley Road Flats were granted by the Developer, Leaf Lane LLP, pursuant to an agreement for lease dated 13 September 2013 made between Leaf Lane LLP and LDHA. By a legal charge dated 28 November 2013 LDHA charged its interest under such agreement in favour of PGP Securities No. 12 Limited as security for all monies due from PGP Finance No. 12 LP to PGP Securities No. 12 Limited.

Covenants to comply with statutory obligations

33. The Head Leases of the Jam Factory Flats contained covenants by LDHA to comply with the provisions of any Act of Parliament and any requirement made by any authority so far as the same affect the Apartment and for so long as the Demised Premises were required to be utilised for social housing purposes pursuant to the Jam Factory S106 to utilise the Demised Premises as such (Fourth Schedule, paras 19 and 20).

34. The Head Leases of the South City Court Flats contained covenants by LDHA to comply with all requirements of any local or other competent authority in relation to the Demised Premises and to comply with all covenants, restrictions, stipulations and other matters affecting the reversion or the term of years thereby granted (Fourth Schedule, paras 16 and 17).

35. The Head Leases of the Wanley Road Flats contained covenants not to do or permit or suffer to be done any act on or in respect of the Demised Premises which contravenes the provisions of the TCPA and to comply with the provisions of any

statute and any other direction or requirement made or given by any authority so far as the same affect the Demised Premises (clauses 3(12) and 3(13)).

Beneficial ownership of the Head Leases

35A. The Claimant believes that:

- a. PGP Finance No. 5 LP, PGP Finance No. 7 LP and PGP Finance No. 12 LP provided the premiums payable to the Head Landlords for the grant of the Head Leases at the Jam Factory, South City Court and Wanley Road respectively;
- b. the above PGP Companies financed the payment of the premiums by loans from PGP Securities No. 5 LLP, PGP Securities No. 7 Limited and PGP Securities No. 12 Ltd respectively (the "Loan Providers");
- c. LDHA held the Head Leases on trust for the respective PGP Company on terms which provided among other matters that the beneficial owner under the trust would have powers of disposal and management of the property and that the trust would end upon the respective PGP Company being wound up;
- d. LDHA granted a third party charge over its interest in the Head Leases as security for repayment of the respective PGP Company's debt to the Loan Provider; and
- e. on a date unknown to the Claimant but probably between 25 April 2013 and 25 July 2013 PGP Finance No. 5 LP transferred its beneficial interests in the Head Leases of Jam Factory Flats 10-18 to PGP Jam Factory Limited and PGP Jam Factory Limited assumed PGP Finance No. 5 LP's obligations in respect of the loan from PGP Securities No. 5 LLP to finance the purchase of the Head Leases.

The Conspiracies

36. On precise dates unknown to the Claimant and at places unknown to the Claimant, LDHA, Protected Growth Plan Limited, Defendant 39, and the respective PGP Companies with the predominant intention of harming the Claimant by causing the loss to the Claimant of the benefit of the AHOs in respect of the AHUs and/or (which is the same thing) that LDHA and the respective PGP Companies should make a profit from using the AHUs otherwise than as Affordable Housing, in particular letting the AHUs at market rents and selling sub-leases of the AHUs to MVPs at full market price, or from selling sub-leases of the AHUs at a profit to third parties for use otherwise than as Affordable Housing, conspired and combined together and/or with another person or persons unknown to the Claimant in order to:

- a. procure the grant by LDHA of ordinary 125 year sub-leases of the AHUs to the PGP Companies, which the PGP Companies would let at market rents and market and sell to MVPs at full market price or sell at a profit to third parties for use otherwise than as Affordable Housing, in breach of the AHO;
- b. recruit individual grantees of the sub-leases of the AHUs but who would purport to take the sub-leases on trust for the PGP Companies and as their nominees; whereas to LDHA's and the PGP Companies' knowledge such nominees had no intention to occupy the AHUs or to perform any of the obligations under the sub-leases and nor were they in need of Affordable Housing in the London Borough of Southwark;
- c. execute sham documentation, namely agreements for sub-leases and sub-leases containing Shared Ownership Clauses and memoranda of staircasing, which in the absence of disclosure of further details of the transactions would give the appearance to third parties and the court that the sub-leases were granted as shared ownership leases to individuals in need of Affordable Housing and had been staircased by them to 100% triggering the SOLE;
- d. thereby fraudulently to represent to MVPs of the sub-leases, and/or with the intent that such representations would be passed on to them and also to the

Claimant and the Head Landlords and acted on by them, that it was lawful to use the AHUs otherwise than as Affordable Housing, because the sub-leases were granted as shared ownership leases to individuals in need of Affordable Housing and had been staircased by them to 100% triggering the SOLE, whereas:

- i. to their knowledge those aspects of or steps in the transactions particularised below did not accord with the true intentions of the parties thereto and had no other commercial purpose than to harm the Claimant in the manner stated above,
 - ii. had the MVPs known the true position they would not have bought the sub-leases and
 - iii. had the Claimant and/or the Head Landlords known the true position they would or might have taken steps to prevent the loss of the AHUs for use as Affordable Housing; and
- e. ~~split the profits made thereby by sharing between LDHA and the PGP Companies and/or with another person or persons unknown to the Claimant the excess of the market rents above the rate in accordance with Intermediate Rented Terms and fixing the purchase prices for the PGP Companies acquiring the sub-leases at above the value thereof on the assumption that they were subject to the AHO but below the open market value thereof on the assumption that the SOLE had been triggered, as illustrated at Appendix 3 by the respective PGP Companies making payments or providing consideration to LDHA in ways unknown to the Claimant, including but not limited to the PGP Companies repaying part or all of their debts to the Loan Providers and causing themselves to be wound up, so that the unencumbered beneficial interest in the Head Leases vested in LDHA although LDHA had not provided the purchase price for the Head Leases ("the Conspiracies").~~

37. There were four such Conspiracies:

- a. relating to Jam Factory Flats 1-18 probably commencing on or before 28 October 2010 between LDHA, Protected Growth Plan Limited and PGP Finance No. 5 LP ("Jam Factory Conspiracy");
- b. relating to South City Court Flats 35, 36 and 43 probably commencing on or before 5 December 2012 between LDHA, Protected Growth Plan Limited and PGP Finance No. 7 LP ("South City Court Conspiracy");
- c. relating to Jam Factory Flats 10-18 probably commencing on or before 25 April 2013 between LDHA and PGP Jam Factory Limited ("Jam Factory Flats 10-18 Conspiracy"); and
- d. relating to Wanley Road Flats 1-5 probably commencing on or before 13 September 2013 between LDHA, Protected Growth Plan Limited and PGP Finance No. 12 LP ("Wanley Road Conspiracy").

38. LDHA, Protected Growth Plan Limited and the PGP Companies intended to use the following unlawful means knowing that they were unlawful or suspecting that they were unlawful and deliberately failing to inquire into whether they were unlawful and with the predominant intention of harming the Claimant:

- a. inducing breaches of the AHO by LDHA, the PGP Companies and MVPs of the Sub-leases, intending to cause the AHO to be breached; and
- b. deceiving the MVPs, the Claimant and the Head Landlords by executing sham documentation as referred to at para 40.

39. In respect of each of the matters described above LDHA acted by and under the direction of Phillip Butt and/or Fraser Allen and Protected Growth Plan Limited and the PGP Companies acted by and under the direction of Terry McMillan, save that prior to on or about 28 April 2014 PGP Jam Factory Limited (former Defendant 11) acted by and under the direction of Scott Matthew Franklin. Further, for these purposes the Claimant contends that the knowledge and intentions of Phillip Butt and Fraser Allen should be attributed to LDHA and the knowledge and intentions of

Terry McMillan should be attributeded to Protected Growth Plan Limited and the PGP Companies.

Sham transactions

40. In any event, in respect of the relevant transactions set out below the true intention of the parties thereto was for LDHA to grant ordinary 125 year sub-leases of the AHUs to the PGP Companies ~~on payment of a premium calculated by reference to 100% of the value of the flat~~ but they intended to give to third parties or the court the appearance of shared ownership leases granted to the Nominees and staircased by them to 100%, triggering the SOLE. In particular, (as applicable) the following features of the transactions did not accord with the true intentions of the parties thereto:

- a. naming the Nominees as grantees of the Sub-leases, ~~and~~ grantors of charges over the Sub-leases and trustees in declarations of trust in respect of the Sub-leases;
- b. the Shared Ownership Clauses of the Sub-leases including any form of Sub-lease annexed to the agreements for sub-lease;
- c. the payment of a purchase price for the grant of the Sub-lease, alternatively the division of the purchase price for the grant of the Sub-leases into an initial premium and one or more purported staircasing payments; and
- d. the memoranda of staircasing;

and, further or alternatively, the interposition of the Nominees and the other features of the transactions stated above were elements inserted into a composite transaction which had no business or commercial purpose other than to evade the AHO by triggering the SOLE.

Fraudulent misrepresentations

41. Further, LDHA and the respective PGP Companies, by executing the documentation (referred to in more detail below) recording the above apparent features of the

transactions, fraudulently represented to MVPs of the AHUs at the respective Sites, and/or with the intent that such representations would be passed on to them and also to the Claimant and the Head Landlords and acted on by them, that the Sub-leases were granted as shared ownership leases to the Nominees and/or had been staircased by them to 100%, when to their knowledge those aspects of or steps in the transactions referred to in the preceding para were not in accordance with the true intentions of the parties thereto and had no other commercial purpose than to harm the Claimant.

42. Pursuant to the Conspiracies on a precise date or dates unknown to the Claimant but commencing in or before March 2013 Stephen Sedgwick, Defendant 27, and/or Independent London Limited, estate agents trading from Studio One, 197 Long Lane, London SE1 4PD, acting under his direction on behalf of LDHA and/or the respective PGP Companies marketed and arranged for the AHUs at each of the Sites to be let at market rents and marketed the AHUs at each of the Sites to be sold to prospective MVPs for use otherwise than as Affordable Housing.

43. In particular, Stephen Sedgwick, Defendant 27, and/or Independent London Limited acting under his direction marketed the AHUs on behalf of LDHA and/or the respective PGP Companies as private flats available on the open market using advertising material containing words such as "perfect for city commuters and socialites alike" and "exclusive gated development" or similar phrases. Further particulars will be given on disclosure. LDHA and the respective PGP Companies thereby impliedly and fraudulently represented to the MVPs that it was lawful to occupy the AHUs otherwise than as Affordable Housing, knowing that this was unlawful or suspecting that this was unlawful and deliberately failing to inquire into whether it was unlawful.

The Nominees

44. The respective Nominees, Defendants 12-20 (Jam Factory 1-9 Nominees), Defendants 22-24 (South City Court Nominees); Defendants 25-33 (Jam Factory 10-18 Nominees); and Defendants 34-38 (Wanley Road Nominees):

- a. were not in need of Affordable Housing within the London Borough of Southwark;
- b. had no intention of occupying the AHUs or performing any of the obligations under the Sub-leases or agreements for sub-lease; and
- c. had no intention of entering into a shared ownership lease or of exercising any of the Shared Ownership Clauses.

The transactions in detail

Jam Factory Flats 1-9

45. On 8 November 2012 (Flat 1) and 2 November 2012 (Flats 2-9) LDHA granted 125 year Sub-leases of Jam Factory Flats 1-9 purportedly to Jam Factory 1-9 Nominees, Defendants 12-20, respectively.

46. Prior to the date of each Sub-lease:

- a. LDHA and the Nominee purportedly entered into an agreement for sub-lease annexing a form of Sub-lease containing Shared Ownership Clauses, which agreement required the Nominee to execute the documentation stated in the next sub-paragraph;
- b. the Nominee executed a declaration of trust and power of attorney in favour of PGP Finance No. 5 LP;
- c. as stated above, PGP Securities No. 5 LLP had provided a loan facility to PGP Finance No. 5 LP for the purchase of the Sub-lease Head Lease;
- d. PGP Finance No. 5 LP executed a charge over its beneficial interest in the Sub-lease in favour of PGP Securities No. 5 LLP in respect of its liabilities to PGP Securities No. 5 LLP; and

e. if, contrary to the above, any purchase price for the Sub-lease was paid, PGP Finance No. 5 LP paid the full purchase price of the Sub-lease calculated by reference to 100% of the value of the flat to LDHA, who held it on trust for PGP Finance No. 5 LP, on or before completion.

47. On about the date of each Sub-lease the Nominee purportedly executed a charge over their legal interest in the Sub-lease in favour of PGP Securities No. 5 LLP and PGP Finance No. 5 LP, executed a charge over its beneficial interest in the Sub-lease in favour of PGP Securities No. 5 LLP. On or before 28 January 2013 PGP Finance No. 5 LP refinanced the purchase of the Sub-leases by a loan from United National Bank Limited secured by a legal charge dated 28 January 2013.

48. Jam Factory 1-9 Nominees, Defendants 12-20, had no need for Affordable Housing, had homes elsewhere, never occupied or intended to occupy the flats or to perform any of the obligations under the Sub-leases or agreements for sub-lease and LDHA and PGP Finance No. 5 LP knew and intended the same. Save for the execution of the agreement for sub-lease, declaration of trust and power of attorney, Sub-lease and above charge, the Nominees had no real involvement in the apparent transactions concerning the same. On or about the dates of executing the above documents they received payments from one or more of LDHA, PGP Finance No. 5 LP and/or another person or persons unknown to the Claimant in return for doing so.

49. The Sub-leases of Jam Factory Flats 1-9 contained no Shared Ownership Clauses at all. For the avoidance of doubt the Claimant contends that Jam Factory 1-9 Nominees, LDHA and PGP Finance No. 5 LP had no intention of entering into a shared ownership lease or of exercising any Shared Ownership Clauses. Notwithstanding this, Hartley Apartments Limited and Jam Factory Apartments Limited, Defendants 2 and 3, (but not LDHA) contend in their defence at para 42.3

that Flats 1, 2, 3, 4 and 8 were staircased to 100% on or about the date the Sub-lease was granted and Flats 6 and 9 were staircased to 100% prior to the date the Sub-lease was granted and in each case that memoranda of staircasing were executed to that effect, whereas in fact no staircasing provision of the Sub-lease was implemented.

50. By deeds of variation dated 30 March 2015 LDHA and Hartley Apartments Limited, Defendant 2, purported to vary the Sub-leases in respect of Jam Factory Flats 1-9 by adding shared ownership provisions to them (see clauses 2.1 and 2.2). These deeds of variation are immaterial.

South City Court Flat 34

51. On 27 March 2013 LDHA granted to Floretta Evelina West, Defendant 21, a 125 year Sub-lease of South City Court Flat 34 for a premium of £199,500. The market value of the Sub-lease was in the region of £332,250.

52. The purchase price for the grant of the Sub-lease of Flat 34 was in part funded by a loan of £10,000 from Terry McMillan, made pursuant to a written agreement dated 27 March 2013 under the terms of which Terry McMillan was entitled in addition to repayment of the loan to a "Facility Fee" equal to one third of the sum by which the net proceeds of sale pursuant to an Open Market Sale exceeded £159,962.50 (see at schedule 3). The above sums were secured by a legal charge over the Sub-lease dated 15 July 2014 granted by Floretta West in favour of Terry McMillan.

53. Floretta West had no need for Affordable Housing, had a home elsewhere, never occupied or intended to occupy Flat 34 and bought it as a buy-to-let property.

54. The Sub-lease of Jam Factory Flat 34 contained no Shared Ownership Clauses at all. For the avoidance of doubt, the Claimant contends that LDHA and Floretta West had no intention of entering into a shared ownership lease or of exercising any

Shared Ownership Clauses. Notwithstanding this, LDHA contended by its solicitor's letter dated 21 August 2015 that Floretta West staircased to 100% pursuant to an agreement for sub-lease made between LDHA and Floretta West and prior to completion thereof. On a date or dates unknown to the Claimant memoranda of staircasing were executed by Phillip Butt on behalf of LDHA and Floretta West purporting to record that she had staircased up to 100% prior to the date of grant of the Sub-lease, as follows: to 70% on 13 March 2013 and to 100% on 20 March 2013. If (contrary to the above) any staircasing payment was made, it was not made in accordance with arrangements agreed by the Claimant.

55. The true intention of the parties was for LDHA to grant to Floretta West an ordinary 125 year sub-lease of Flat 34 on payment of a premium calculated by reference to 100% of the (contractually agreed) value of the flat but they intended to give to third parties or the court the appearance of a shared ownership lease and staircased by her to 100%, triggering the SOLE. In particular, (as applicable) the following features of the transactions did not accord with the true intentions of the parties thereto:
- a. the Shared Ownership Clauses of any form of Sub-lease annexed to any agreement for sub-lease;
 - b. any division of the purchase price for the grant of the Sub-lease into an initial premium and one or more purported staircasing payments; and
 - c. any memoranda of staircasing.

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56. By a deed of variation dated 30 June 2015 LDHA and Floretta West purported to vary the Sub-lease of Flat 34 by adding shared ownership provisions to it (see clauses 2.1 and 2.2). This deed of variation is immaterial.

57. On 18 July 2013 LDHA granted 125 year Sub-leases of South City Court Flats 35, 36 and 43 purportedly to South City Court Nominees, namely Defendants 22-24 respectively.

58. Prior to the date of each Sub-lease:

- a. LDHA and the Nominee purportedly entered into an agreement for sub-lease annexing a form of Sub-lease containing Shared Ownership Clauses, which agreement required the Nominee to execute the documentation stated in the next sub-paragraph;
- b. the Nominee executed a declaration of trust and power of attorney in favour of PGP Finance No. 7 LP;
- c. as stated above, PGP Securities No. 7 LLP had provided a loan facility to PGP Finance No. 7 LP for the purchase of the Sub-lease Head Lease;
- d. PGP Finance No. 7 LP executed a charge over its beneficial interest in the Sub-lease in favour of PGP Securities No. 7 LLP in respect of its liabilities to PGP Securities No. 7 LLP; and
- e. if, contrary to the above, any purchase price for the Sub-lease was paid, PGP Finance No. 7 LP paid the full purchase price of the Sub-lease calculated by reference to 100% of the value of the flat to LDHA, who held it on trust for PGP Finance No. 7 LP, on or before completion.

59. South City Court Nominees, Defendants 22-24, had no need for Affordable Housing, had homes elsewhere, never occupied or intended to occupy the flats or to perform any of the obligations under the Sub-leases or agreements for sub-lease and LDHA and PGP Finance No. 7 LP knew and intended the same. Save for the execution of the agreement for sub-lease, declaration of trust and power of attorney, Sub-lease and a charge (if any), the Nominees had no real involvement in the apparent transactions concerning the same. On or about the dates of executing the above documents they received payments from one or more of LDHA, PGP Finance No. 7

LP and/or another person or persons unknown to the Claimant in return for doing so.

60. The Sub-leases of South City Court Flats 35, 36 and 43 purported to contain Shared Ownership Clauses that were not in the form of the applicable HCA standard Shared Ownership Flat Lease, in that they omitted the 21 year pre-emption period following 100% staircasing (see the definition of "Pre-emption Period" at p.29 HCA lease cf. p.12 of the Sub-leases). South City Court Nominees, LDHA and PGP Finance No. 7 LP had no intention of entering into a shared ownership lease or of exercising any of the Shared Ownership Clauses.

61. LDHA contended by its solicitor's letter dated 21 August 2015 that the South City Court Nominees, Defendants 22-24, staircased to 100% pursuant to the above agreements for sub-lease and prior to completion thereof. On a date or dates unknown to the Claimant memoranda of staircasing were executed by Phillip Butt, on behalf of LDHA and by Terry McMillan on behalf of PGP Finance No. 7 LP for the South City Court Nominees, purporting to record that each of the Nominees staircased up to 100% on the date of grant of the Sub-lease. In fact, the staircasing provisions at schedule 1, para 1(a)-(f) of the Sub-lease were not implemented. If (contrary to the above) any staircasing payment was made, it was not made in accordance with arrangements agreed by the Claimant.

Jam Factory Flats 10-18

62. On 1 November 2013 (Flats 10, 12--18) and 8 November 2013 (Flat 11) LDHA granted 125 year Sub-leases of Jam Factory Flats 10-18 purportedly to Jam Factory 10-18 Nominees, namely Defendants 25-33 respectively.

63. Prior to the date of each Sub-lease:

- a. LDHA and the Nominee purportedly entered into an agreement for sub-lease annexing a form of Sub-lease containing Shared Ownership Clauses, which agreement required the Nominee to execute the documentation stated in the next sub-paragraph;
 - b. the Nominee executed a declaration of trust and power of attorney in favour of PGP Jam Factory Limited;
 - c. as stated above, PGP Securities No. 5 LLP had provided a loan facility to PGP Finance No. 5 LP for the purchase of the Sub-lease Head Lease and PGP Jam Factory Limited had assumed PGP Finance No. 5 LP's obligations in respect of the loan facility;
 - d. PGP Jam Factory Limited executed a charge over its beneficial interest in the Sub-lease in favour of PGP Securities No. 5 LLP in respect of its liabilities to PGP Securities No. 5 LLP; and
 - e. if, contrary to the above, any purchase price for the Sub-lease was paid, PGP Jam Factory Limited paid the full purchase price of the Sub-lease calculated by reference to 100% of the value of the flat to LDHA, who held it on trust for PGP Jam Factory Limited, on or before completion.
64. On about the date of each Sub-lease the Nominee purportedly executed a charge over their legal interest in the Sub-lease in favour of PGP Securities No. 5 LLP and PGP Jam Factory Limited executed a charge over its beneficial interest in the Sub-lease in favour of PGP Securities No. 5 LLP. In addition, on the date of the Sub-lease of Flat 16, Andrew Robert Clark, Defendant 31, purportedly executed a form of transfer assigning the Sub-lease back to LDHA.
65. Jam Factory 10-18 Nominees, Defendants 25-33, had no need for Affordable Housing, had homes elsewhere, never occupied or intended to occupy the flats or to perform any of the obligations under the Sub-leases or agreements for sub-lease and LDHA and PGP Jam Factory Limited knew and intended the same. Save for the

execution of the agreement for sub-lease, declaration of trust and power of attorney, Sub-lease and above charge, the Nominees had no real involvement in the apparent transactions concerning the same. On or about the dates of executing the above documents they received payments from one or more of LDHA, PGP Jam Factory Limited and/or person or persons unknown to the Claimant in return for doing so.

66. The Sub-leases of Jam Factory Flats 10-18 purported to contain Shared Ownership Clauses that were not in the form of the applicable HCA standard Shared Ownership Flat Lease, in that they omitted the 21 year pre-emption period following 100% staircasing (see the definition of "Pre-emption Period" at p.29 HCA lease cf. p.12 of the Sub-leases). Jam Factory Nominees 10-18, LDHA and PGP Jam Factory Limited had no intention of entering into a shared ownership lease or of exercising any Shared Ownership Clauses.

67. On a date or dates unknown to the Claimant memoranda of staircasing were executed by Phillip Butt on behalf of LDHA purporting to record that each of the Nominees staircased up to 100% on the date of grant of the Sub-lease, whereas in fact the staircasing provisions at schedule 1, para 1(a)-(f) of the Sub-lease were not implemented.

Wanley Road Flats

68. On 9 May 2014 LDHA granted 125 year Sub-leases of the Wanley Road Flats purportedly to Wanley Road Nominees, namely Defendants 34-38 respectively.

69. Prior to the date of each Sub-lease:

- a. LDHA and the Nominee purportedly entered into an agreement for sub-lease annexing a form of Sub-lease containing Shared Ownership Clauses, which agreement required the Nominee to execute the documentation stated in the next sub-paragraph;

- b. the Nominee executed a declaration of trust and power of attorney in favour of PGP Finance No. 12 LP;
- c. as stated above, PGP Securities No.12 LLP had provided a loan facility to PGP Finance No. 12 LP for the purchase of the Sub-lease Head Lease;
- d. PGP Finance No. 12 LP executed a charge over its beneficial interest in the Sub-lease in favour of PGP Securities No. 12 LLP in respect of its liabilities to PGP Securities No. 12 LLP; and
- e. if, contrary to the above, any purchase price for the Sub-lease was paid, PGP Finance No. 12 LP paid the full purchase price of the Sub-lease calculated by reference to 100% of the value of the flat to LDHA, who held it on trust for PGP Finance No. 12 LP, on or before completion.

70. Also on 9 May 2014, each Nominee purportedly transferred their legal interest in the Sub-lease to PGP Finance No. 12 LP for no monetary consideration. On or before 27 June 2014 PGP Finance No. 12 LP refinanced the purchase of the Sub-leases by a loan from Aldermore Bank plc secured by a legal charge dated 27 June 2014.

71. Wanley Road Nominees, Defendants 34-38, had no need for Affordable Housing, had homes elsewhere, never occupied or intended to occupy the flats or to perform any of the obligations under the Sub-leases or agreements for sub-lease and LDHA and PGP Finance No. 12 LP knew and intended the same. Save for the execution of the agreement for sub-lease, declaration of trust and power of attorney, Sub-lease, charge (if any) and transfer, the Nominees had no real involvement in the apparent transactions concerning the same. On or about the dates of executing the above documents they received payments from one or more of LDHA, PGP Finance No. 12 LP and/or person or persons unknown to the Claimant in return for doing so.

72. The Sub-leases of the Wanley Road Flats purported to contain Shared Ownership Clauses that were not in the form of the applicable HCA standard Shared

Ownership Flat Lease, in that they omitted the 21 year pre-emption period following 100% staircasing (see the definition of "Pre-emption Period" at p.29 HCA lease cf. p.12 of the Sub-leases). Wanley Road Nominees, LDHA and PGP Finance No. 12 LP had no intention of entering into a shared ownership lease or of exercising any Shared Ownership Clauses.

73. On a date or dates unknown to the Claimant memoranda of staircasing were executed by Terry McMillan purportedly "by" each Nominee and by Phillip Butt on behalf of LDHA purporting to record that each of the Nominees staircased up to 100% on a date or dates prior to the date of grant of the Sub-lease, as follows:

- a. Flat 1: 75% on 5 March 2014 and 100% on 19 March 2014;
- b. Flat 2: 75% on 5 March 2014 and 100% on 19 March 2014;
- c. Flat 3: 75% on 19 March 2014 and 100% on 25 March 2014;
- d. Flat 4: 75% on 19 March 2014 and 100% also on 19 March 2014; and
- e. Flat 5: 75% on 19 March 2014 and 100% on 25 March 2014.

The staircasing provisions at schedule 1, para 1(a)-(f) of the Sub-lease were not implemented. If (contrary to the above) any staircasing payment was made, it was not made in accordance with arrangements agreed by the Claimant.

Lettings at market rents

74. As stated above, Stephen Sedgwick, Defendant 27, and/or Independent London Limited acting under his direction as a director thereof on behalf of LDHA and/or the PGP Companies marketed and arranged for the AHUs at each of the Sites to be let at market rents. The best particulars the Claimant can give at present are as follows.

- a. Between about March 2013 and September 2013 PGP Finance No. 5 LP pursuant to ~~an~~ its beneficial interest in the Head Leases of the Jam Factory Flats granted to it by LDHA (~~the nature of which is unknown to the Claimant~~) and/or with the permission of LDHA let out the Jam Factory Flats

on assured shorthold tenancy agreements at market rents. The rent in accordance with Intermediate Rented Terms was prior to 1 May 2013 £680.33 per month and from that date until 1 May 2014 was £743.89 per month. In particular (but not by way of limitation), PGP Finance No. 5 let:

- i. Flat 6 on 6 March 2013 to Megan Simpkins at a rent believed to be around £1,343 per month;
- ii. Flat 18 on 30 April 2013 to Laura Helene Fontana and Gabriel Courvoisier at a rent of £1,343.33 per month;
- iii. Flat 10 on 4 May 2013 to Darren Chidlaw at a rent of £1,343 per month; and
- iv. further particulars will be given on disclosure.

b. From about May 2014 PGP Finance No. 12 LP marketed and let each of Wanley Road Flats 1-5 at a market rent (and the rent from these flats was paid by the tenants to Trademark Property & Investments Limited). In particular (but not by way of limitation), PGP Finance No. 12 LP let:

- i. Flat 1 on about 1 August 2014 to Fredy Sarmiento;
- ii. Flat 2 on about 21 June 2014 to Sam Redhead and Clare Cottrell;
- iii. Flat 2 on about 27 June 2015 to Adam Ellett and Owen Morgan;
- iv. Flat 3 on about 18 June 2014 to Laverne Seaton;
- v. Flat 4 on about 30 August 2014 to Joanna Murphy and Timothy Roberts;
- vi. Flat 5 on about 22 August 2014 to Joe Edwards, Ben Sullivan, Rebecca Head and Katie Malcolmson; and
- vii. further particulars will be given on disclosure.

Sales to Defendants 2 and 3

75. On 31 July 2014 Jam Factory 10-18 Nominees, Defendants 25-33, acting under the direction of Terry McMillan for PGP Jam Factory Limited transferred the Sub-leases

of Jam Factory Flats 10-18 to Jam Factory Apartments Limited, Defendant 3. The purchase prices paid by Defendant 3 for Jam Factory Flats 10-18 were substantially less than the open market values, as follows:

Flat no.	Purchase price	Open market value
10	£305,555	£518,432
11	£305,555	£475,808
12	£305,555	£475,808
13	£305,555	£523,371
14	£305,555	£574,935
15	£305,555	£535,284
16	£305,555	£475,808
17	£305,555	£525,371
18	£305,555	£535,284

76. On 15 September 2014 Jam Factory 1-9 Nominees, Defendants 12-20, acting under the direction of Terry McMillan for PGP Finance No. 5 LP, transferred the Sub-leases of Jam Factory Flats 1-9 to Hartley Apartments Limited, Defendant 2. The purchase prices for the transfers were funded by Silverstream Finance (Hampstead) Limited, Defendant 7, the proprietor of a legal charge over the Sub-leases of Jam Factory Flats 1-9 dated 15 September 2014. The Claimant does not know the purchase prices paid by Hartley Apartments Limited for Jam Factory Flats 1-9 but believes that they amounted in total to £2,575,000, thus on average £286,111 per flat, and hence also substantially below open market values.

Flats sold to MVPs

77. The Sub-leases of the following flats set out in this section were marketed by Hartley Apartments Limited (Defendant 2) and/or the PGP Companies through among others Stephen Sedgwick, Defendant 27, and/or Independent London Limited

acting under his direction and sold to the following MVPs as private flats available on the open market.

Jam Factory Flats 5 and 7

78. On 23 September 2014 Hartley Apartments Limited, Defendant 2, transferred Jam Factory Flat 5 to Wai Kwan Lily Lai for £404,000.

79. On 15 September 2014 Hartley Apartments Limited, Defendant 2, transferred Jam Factory Flat 7 to Richard Andrew Reeve-Young and Sarah Anne Howard for £395,000.

South City Court Flats 35, 36 and 43

80. On 24 September 2014 PGP Finance No. 7 LP for Stephen Turner, Defendant 22, transferred South City Court Flat 35 to Matthew Robert Wiseman for £320,000.

81. On 13 June 2014 PGP Finance No. 7 LP for Jason Wright, Defendant 23, transferred South City Court Flat 36 to Timothy Alan Maugherman and Barry John Howard Cotton for £400,000.

82. On 23 September 2014 PGP Finance No. 7 LP for Richard Palser, Defendant 24, transferred South City Court Flat 43 to Thomas Arthur Wooster for £295,000.

Wanley Road Flats 1-5

83. On about 22 May 2015 PGP Finance No. 12 LP transferred Wanley Road Flat 1 to Karen Mayor and Donncha O'Shea for £417,000.

84. On 30 April 2015 PGP Finance No. 12 LP acting through Terry McMillan transferred Wanley Road Flat 2 to Karen Mei Wan Morris and Jonathan Robert Morris for £310,000.

85. On 2 July 2015 the Claimant served on PGP Finance No. 12 LP a letter before claim in respect of Wanley Road. By email dated 22 July 2015 Darlington's Solicitors on their behalf stated that PGP Finance No. 12 LP were "arms length purchasers" of the Wanley Road Flats. The Claimant asked Darlington's Solicitors to provide evidence of the same and by email dated 27 July 2015 Darlington's Solicitors stated that: "I am awaiting instructions and am aware my client is currently on annual leave."

86. Thereafter PGP Finance No. 12 LP acting through their director, Terry McMillan:
- a. on 29 July 2015 transferred Wanley Road Flat 3 to Christina Gordon for £415,000;
 - b. on 30 July 2015 transferred Wanley Road Flat 4 to Freddie Bellinger for £345,000; and
 - c. on 31 July 2015 transferred Wanley Road Flat 5 to Matthew Cooper for £395,000.

87. The above flats were bought by the MVPs and have been used by them otherwise than as Affordable Housing. When buying their Sub-leases each of the above MVPs relied on and was induced by the fraudulent representations stated at paras 41-43 above insofar as they related to each of their Sub-leases. The Claimant considers that it would be oppressive and unjust to require the MVPs to comply with the AHO. In the premises the benefit of the AHO has been permanently lost to the Claimant in respect of these AHUs.

Breaches of the AHO

Market lettings

88. In the premises, LDHA and PGP Finance No. 5 LP have breached the AHO by letting Jam Factory Flats at market rents as stated above.

89. LDHA and PGP Finance No. 12 LP have breached the AHO by letting Wanley Road Flats at market rents as stated above.

90. Further particulars of the breaches of the AHO by LDHA and the PGP Companies in respect of lettings of the AHUs at market rents will be given on disclosure.

Loss of AHUs

91. LDHA and PGP Finance No. 5 LP breached the AHO by disposing of Jam Factory Flats otherwise than on Shared Ownership Terms or Intermediate Rented Terms.

92. Hartley Apartments Limited, Defendant 2, breached the AHO by disposing of Jam Factory Flats 5 and 7 otherwise than on Shared Ownership Terms or Intermediate Rented Terms.

93. LDHA has also breached the AHO in that Jam Factory Flats 5 and 7 have been used and continue to be used for purposes other than providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark. Further, the loss of these AHUs is the direct result of the actions of LDHA, Protected Growth Plan Limited and PGP Finance No. 5 LP in furtherance of the Jam Factory Conspiracy and/or they knowingly induced the said breaches. Further, if specific performance is not granted pursuant to para 105 below in respect of Jam Factory Flats 1-4, 6 and 8-18, LDHA will also have breached the AHO in that these flats will have been used and continue to be used for purposes other than providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark. Further, the loss of these AHUs will be the direct result of the actions of LDHA, Protected Growth Plan Limited, PGP Finance No. 5 LP and PGP Jam Factory Limited in furtherance of the Jam Factory Conspiracy and/or Jam Factory Flats 10-18 Conspiracy and/or they knowingly induced the said breaches.

94. LDHA and Floretta West, Defendant 21, breached the AHO by LDHA disposing of South City Court Flat 34 to Floretta West otherwise than on Shared Ownership Terms or Intermediate Rented Terms.

95. LDHA and Floretta West, Defendant 21, have breached the AHO in that South City Court Flat 34 has been used and continues to be used for purposes other than providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark. It is noted that Floretta West alleges that Flat 34 is occupied by her son, Kieran West, and his wife, who are in need of Affordable Housing in the London Borough of Southwark. It is not accepted that they are in need of Affordable Housing in the London Borough of Southwark.

96. LDHA and PGP Finance No. 7 LP breached the AHO by disposing of South City Court Flats 35, 36 and 43 otherwise than on Shared Ownership Terms or Intermediate Rented Terms.

97. LDHA has also breached the AHO in that South City Court Flats 35, 36 and 43 have been used and continue to be used for purposes other than providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark. Further, the loss of these AHUs is the direct result of the actions of LDHA, Protected Growth Plan Limited and PGP Finance No. 7 LP in furtherance of the South City Court Conspiracy and/or they knowingly induced the said breaches.

98. LDHA and PGP Finance No. 12 LP breached the AHO by disposing of Wanley Road Flats otherwise than on Shared Ownership Terms or Intermediate Rented Terms.

99. LDHA has also breached the AHO in that Wanley Road Flats have been used and continue to be used for purposes other than providing housing accommodation to

households in need of Affordable Housing in the London Borough of Southwark. Further, the loss of these AHUs is the direct result of the actions of LDHA, Protected Growth Plan Limited and PGP Finance No. 12 LP in furtherance of the Wanley Road Conspiracy and/or they knowingly induced the said breaches.

Declarations against Nominees

100. On 23 November 2015 the Claimant served letters of claim on the Nominees. They have not accepted that at the material time they were not in need of Affordable Housing in the London Borough of Southwark or that they were party to sham transactions.

101. The Claimant is entitled to declarations against each of the Nominees that:

- a. on or about the date of the Sub-lease under which he is purportedly the lessee, he was not in need of Affordable Housing in the London Borough of Southwark and/or had no intention of occupying the AHU;
- b. (insofar as he was a party thereto) the following features of the relevant transactions were sham:
 - i. naming him as lessee under the Sub-lease ~~and~~, grantor of a charge over the Sub-lease and trustee in a declaration of trust in respect of the Sub-lease;
 - ii. the Shared Ownership Clauses of the Sub-lease including any form of Sub-lease annexed to the agreement for sub-lease;
 - iii. the payment of a purchase price for the grant of the Sub-lease, alternatively the division of the purchase price for the grant of the Sub-lease into initial premium and one or more purported staircasing payments; and/or
 - iv. the memoranda of staircasing.

Specific performance

102. It would be just to grant specific performance of the AHO against Hartley Apartments Limited and Jam Factory Apartments Limited, Defendants 2 and 3, and against Floretta West, Defendant 21. The AHO was imposed in the public interest and in accordance with local and national planning policies, as stated above. Only an injunction would provide an effective remedy. The injury is not small, nor is it capable of being properly estimated or adequately compensated in money because compensation would not enable the Claimant to replicate what the flats should otherwise provide: namely, a mixed community within a high quality residential development.

103. Nor would an order of specific performance be oppressive as the above defendants:

- a. are commercial buyers;
- b. bought the Sub-leases at substantially below open market value;
- c. bought the Sub-leases without making all due inquiries that a reasonably careful commercial buyer would have made into:
 - i. the applicable S106 and the terms of the AHO and SOLE; and/or
 - ii. the Sub-leases and the associated transactions described above and in particular (but without limitation) the unusual features of the transactions described above; and/or
 - iii. the lawfulness of using or disposing of the AHUs otherwise than as Affordable Housing; and in particular

1. Hartley Apartments Limited and Jam Factory Apartments Limited knew that the interposition of the Nominees and the other features of the transactions described above were elements inserted into a composite transaction which had no business or commercial purpose other than to evade the AHO by triggering the SOLE; and

2. it is noted that by para 23 of the witness statement of their director, Nir Zamek, dated 29 July 2015 Hartley Apartments Limited and Jam Factory Apartments Limited asserted that they were advised by Ingram Winter Green solicitors that they would acquire good title that they could sell on to MVPs and that the content of such legal advice was that there was no doubt that the Sub-leases were not bound by the relevant obligations arising under the S.106; pending disclosure of such advice the Claimant does not accept that they were advised that it was lawful to use or dispose of the AHUs otherwise than as Affordable Housing or that this was a matter beyond doubt; but
3. in any event, Hartley Apartments Limited and Jam Factory Apartments Limited knew that Ingram Winter Green were in a position of conflict, since Ingram Winter Green had advised the parties thereto in relation to setting up the Conspiracies, but they failed to obtain properly independent legal advice;
- d. appointed conveyancing solicitors to act for them in relation to the purchase of the Sub-leases and insofar as the solicitors failed to make all due inquiries and to give all the advice that a reasonably competent conveyancing solicitor would have made or given, they have a claim in negligence against the solicitors in respect of any losses caused thereby; and
- e. further particulars will be given on disclosure.

104. Hartley Apartments Limited and Jam Factory Apartments Limited, Defendants 2 and 3, threaten and intend to sell Jam Factory Flats 1-4, 6 and 8-18 to MVPs for use otherwise than as Affordable Housing and thereby to dispose of the said flats otherwise than on Shared Ownership Terms or Intermediate Rented Terms. In particular, in about February or March 2015 they entered into contracts of sale of the Sub-leases of Jam Factory Flats 1-4, 6 and 8-18 to purchasers in Hong Kong at full

market value. The Claimant believes that some or all of these contracts of sale may have been rescinded by the purchasers.

105. The Claimant served letters before action on Hartley Apartments Limited and Jam Factory Apartments Limited, Defendants 2 and 3, on 28 April 2015. Defendants 2 and 3 initially gave undertakings dated 17 June 2015 not to dispose of the flats without first giving 28 days' notice to the Claimant but by application notice dated 29 July 2015 applied to withdraw the undertakings; such application was dismissed and an interim injunction granted by Norris J on 3 August 2015. The Claimant is entitled to an order of specific performance of the AHO requiring Hartley Apartments Limited and Jam Factory Apartments Limited to use Jam Factory Flats 1-4, 6 and 8-18 for the purpose of providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark and requiring them to dispose of the said flats on Shared Ownership Terms or Intermediate Rented Terms.

106. For the reasons stated above, the AHO continues to bind Jam Factory Flats 1-4, 6 and 8-18. By para 6.3 of its defence dated 27 July 2015 Silverstream Finance (Hampstead) Limited admitted that, if the AHO continues to bind Hartley Apartments Limited, it also continues to bind it. In the circumstances the Claimant is entitled to declarations against Hartley Apartments Limited and Silverstream Finance (Hampstead) Limited, Defendant 7, that the AHO continues to bind Jam Factory Flats 1-4, 6 and 8-9 and against Jam Factory Apartments Limited that the AHO continues to bind to Jam Factory Flats 10-18.

107. The Claimant served a letter before claim on Floretta West, Defendant 21, on 14 August 2015. She responded by letter dated 26 August 2015 alleging that she purchased Flat 34 Wanley Road for occupation by her son, Kieran West, and his wife and not offering any undertaking. Floretta West threatens and intends to continue to

use South City Court Flat 34 otherwise than as Affordable Housing. The Claimant is entitled to an order of specific performance of the AHO requiring Floretta West to use Flat 34 for the purpose of providing housing accommodation to households in need of Affordable Housing in the London Borough of Southwark and requiring her to dispose of Flat 34 on Shared Ownership Terms or Intermediate Rented Terms. However, in all the circumstances the Claimant will accept damages in lieu of specific performance.

Loss and damage

As a result of the matters stated above the Claimant has suffered loss and damage. The Claimant has been temporarily deprived of the benefit of the AHO in respect of the AHUs that have been let at market rents and has permanently lost the benefit of the AHUs that have been sold to MVPs, namely Jam Factory Flats 5 and 7, South City Court Flats 35, 36 and 43 and Wanley Road Flats.

(1) Damages for temporary loss of AHUs

108. The Claimant is entitled to damages to cover the period of time during which the AHUs were let at market rents. The Claimant seeks an award of *Wrotham Park* damages, namely the sum the Claimant would reasonably have required to allow the AHUs to be rented on the open market rather than on Intermediate Rented Terms, as follows:

- a. The difference between the open market rental values of the AHUs and the rate in accordance with intermediate Rented Terms at the material times. The difference between the two indicates the likely subsidy the Claimant would have had to pay, and therefore would have reasonably required, in order to have provided alternative units, procured from the open market, on Intermediate Rented Terms.
- b. The amount the Claimant claims under this head is £TBA.
- c. Further particulars will be given on disclosure.

(2) Damages for permanent loss of Jam Factory Flats 5 and 7

109. The Claimant seeks an award of *Wrotham Park* damages; namely that sum the Claimant would reasonably have required to allow Flats 5 and 7 to be sold into the open market, calculated as follows:

- a. Given the current deficit of affordable housing within the borough, the Claimant would reasonably have required a sum that was sufficient to enable it to provide more Affordable Housing than otherwise already provided. Furthermore, such accommodation would need to be of an equivalent size and quality and within the same development or very near to it. The replacement units would need to be provided within the same development or nearby in order to guarantee mixed communities.
- b. The Claimant would have required a figure that equated to the open market value of the AHUs, plus an uplift of 25% in order to increase the number of units provided and cover operational costs.
- c. As at the dates they were sold, the market value of Flat 5 was £528,383 and the current market value of Flat 7 was £491,304.
- d. The amount the Claimant claims in relation to the permanent loss of these AHUs is £660,478 for Flat 5 and £614,130 for Flat 7, totalling £1,274,608.

(3) Damages for permanent loss of Jam Factory Flats 1-4, 6 and 8-18 in the alternative to an injunction

~~110. In the alternative to an injunction and/or specific performance, the Claimant~~
seeks damages under section 50, Senior Courts Act 1981 and/or at common law in respect of the loss of Jam Factory Flats 1-4, 6 and 8-18 as Affordable Housing. The Claimant quantifies this alternative claim using the method used to assess damages in the case of *Wrotham Park*, namely the sum the Claimant would reasonably require to allow these flats to be sold into the open market, as follows:

- a. Given the current deficit of affordable housing within the borough, the Claimant would reasonably require a sum that was sufficient to enable it to provide more Affordable Housing than otherwise already provided. Furthermore, such accommodation would need to be of an equivalent size and quality and within the same development or very near to it. The replacement units would need to be provided within the same development or nearby in order to guarantee mixed communities.
- b. The Claimant would have required a figure that equated to the open market value of the AHUs, plus an uplift of 25% in order to increase the number of units provided and cover operational costs.
- c. The total current open market value of the 16 units is £8,463,000, comprised as follows: Flat 1 is £480,000, Flat 2 is £530,000, Flat 3 is £530,000, Flat 4 is £620,000, Flat 6 is £530,000, Flat 8 is £480,000, Flat 9 is £610,000, Flat 10 is £523,000, Flat 11 is 480,000, Flat 12 is £480,000, Flat 13 is £530,000, Flat 14 is £580,000, Flat 15 is £540,000, Flat 16 is £480,000, Flat 17 is £530,000 and Flat 18 is £540,000.
- d. The amount the Claimant claims in relation to the permanent loss of these AHUs is £600,000 for Flat 1, £662,500 for Flat 2, £662,500 for Flat 3, £775,000 for Flat 4, £662,500 for Flat 6, £600,000 for Flat 8, £762,500 for Flat 9, £653,750 for Flat 10, £600,000 for Flat 11, £600,000 for Flat 12, £662,500 for Flat 13, £725,000 for Flat 14, £675,000 for Flat 15, £600,000 for Flat 16, £662,500 for Flat 17 and £675,000 for Flat 18, totalling £10,578,750.

(4) Damages for permanent loss of South City Court Flat 34 in the alternative to an injunction

111. In the alternative to an injunction and/or specific performance, the Claimant seeks damages under section 50, Senior Courts Act 1981 and/or at common law in respect of the loss of Flat 34 as Affordable Housing. The Claimant quantifies this alternative claim using the method used to assess damages in the case of *Wrotham*

Park, namely the sum the Claimant would reasonably require to allow Flat 34 to be sold into the open market, as follows:

- a. Given the current deficit of affordable housing within the borough, the Claimant would reasonably require a sum that was sufficient to enable it to provide more Affordable Housing than otherwise already provided. Furthermore, such accommodation would need to be of an equivalent size and quality and within the same development or very near to it. The replacement units would need to be provided within the same development or nearby in order to guarantee mixed communities.
- b. The Claimant would have required a figure that equated to the open market value of the AHUs, plus an uplift of 25% in order to increase the number of units provided and cover operational costs.
- c. The total current open market value of Flat 34 is £375,000.
- d. The amount the Claimant claims in relation to the permanent loss of this AHU is £468,750.

(5) *Damages for permanent loss of South City Court Flats 35, 36 and 43*

112. The Claimant seeks an award of *Wrotham Park* damages; namely that sum the Claimant would reasonably have required to allow Flats 35, 36 and 43 to be sold into the open market, calculated as follows:

- a. Given the current deficit of affordable housing within the borough, the Claimant would reasonably have required a sum that was sufficient to enable ~~it to provide more Affordable Housing than otherwise already provided.~~ Furthermore, such accommodation would need to be of an equivalent size and quality and within the same development or very near to it. The replacement units would need to be provided within the same development or nearby in order to guarantee mixed communities.

- b. The Claimant would have required a figure that equated to the open market value of the AHUs, plus an uplift of 25% in order to increase the number of units provided and cover operational costs.
- c. As at the dates they were sold, the market value of Flat 35 was £320,000, the market value of Flat 36 was £400,000 and the market value of Flat 43 was £295,000, making a total of £1,015,000.
- d. The amount the Claimant claims in relation to the permanent loss of these AHUs is £400,000 for Flat 35, £500,000 for Flat 36 and £368,750 for Flat 43, totalling £1,268,750.

(6) Damages for permanent loss of Wanley Road Flats

113. The Claimant seeks an award of *Wrotham Park* damages; namely that sum the Claimant would reasonably have required to allow Wanley Road Flats 1-5 to be sold into the open market, calculated as follows:

- a. Given the current deficit of affordable housing within the borough, the Claimant would reasonably have required a sum that was sufficient to enable it to provide more Affordable Housing than otherwise already provided. Furthermore, such accommodation would need to be of an equivalent size and quality and within the same development or very near to it. The replacement units would need to be provided within the same development or nearby in order to guarantee mixed communities.
- b. The Claimant would have required a figure that equated to the open market value of the AHUs, plus an uplift of 25% in order to increase the number of units provided and cover operational costs.
- c. As at the date it was sold, the market value of Wanley Road Flats was £1,840,000 comprised as follows: Flat 1 was £375,000, Flat 2 was £310,000, Flat 3 was £415,000, Flat 4 was £345,000 and Flat 5 was £395,000.

d. The amount the Claimant claims in relation to the permanent loss of these AHUs is £468,750 for Flat 1, £387,500 for Flat 2, £518,750 for Flat 3, £431,250 for Flat 4 and £493,750 for Flat 5, totalling £2,300,000.

114. The Claimant claims interest on such damages as shall be found to be due at such rate and over such periods as the Court shall think just, pursuant to section 35A, Senior Courts Act 1981.

AND THE CLAIMANT CLAIMS:

- (1) A declaration against Defendants 12 - 38 pursuant to para 101;
- (2) Specific performance against Defendants 2 and 3 pursuant to para 105;
- (3) A declaration against Defendants 2, 3 and 7 pursuant to para 106;
- (4) Damages against Defendants 1 and 39 pursuant to para 108;
- (5) Damages against Defendants 1 and 2 and 39 pursuant to para 109;
- (6) In the alternative to specific performance against Defendants 2 and 3, damages against Defendants 1, 2, 3 and 39 pursuant to para 110;
- (7) Damages against Defendants 1 and 21 pursuant to para 111;
- (8) Damages against Defendant 1 and 39 pursuant to para 112;
- (9) Damages against Defendant 1 and 39 pursuant to para 113;
- (10) Interest as stated above;
- (11) Further or other relief.

DAVID LINTOTT

~~Dated: 8/6/15~~

MATT HUTCHINGS

Re-dated:

MATT HUTCHINGS

Re-dated: 6 June 2016

STATEMENT OF TRUTH

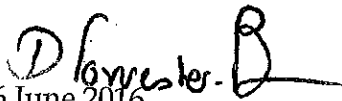
The Claimant believes that the facts stated in these Re-amended Particulars of Claim are true.

I am duly authorised by the Claimant to sign this statement

Full name Doreen Forrester-Brown,

Office held Director of Law and Democracy, Southwark Council

Signature



Date

6 June 2016