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

**by Lesley Coffey BA(Hons) BTP MRTPI**

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

**Date: 29 January 2016**

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**TOWN AND COUNTRY PLANNING ACT 1990 SECTION 226(1)(a)**

**ACQUISITION OF LAND ACT 1981**

**APPLICATION FOR THE CONFIRMATION OF THE LONDON BOROUGH OF  
SOUTHWARK**

**(AYLESBURY ESTATE SITE 1B-1C)**

**COMPULSORY PURCHASE ORDER 2014**

Inquiry held on 30 April, 1-2 May, 12 May, and 13-15 October 2015  
Inspections were carried out on 13 May 2015

File Ref(s): NPCU/CPO/A5840/74092

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**File Ref: NPCU/CPO/A5840/74092**  
**Aylesbury Estate Site 1B-1C**

- The Compulsory Purchase Order was made under section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 by Southwark Council on 24 June 2014.
- The purposes of the Order are to facilitate to the carrying out of development, redevelopment and improvement on or in relation to the land, in particular, for the purpose of securing the regeneration of the Aylesbury Estate in accordance with the provisions of the Aylesbury Area Action Plan, including the demolition of the existing residential units and the provision of a mixed tenure residential development and associated landscaping.
- The main grounds of objection are: the scheme fails to ensure that social rented housing will be provided on the new Aylesbury Estate in accordance with the Aylesbury Area Action Plan ; the proposed scheme is not viable, nor is it deliverable; there are other and arguably more viable options than demolition; refurbishment was not properly considered and the decision to demolish the estate was taken; the scheme will not promote the social well-being of the area; the Acquiring Authority have failed to carry out an Equalities Impact Assessment in relation to the leaseholders; the CPO breaches the human rights of the various resident leaseholders.
- When the inquiry opened there were ten remaining objections<sup>1</sup> and one non-qualifying objection.

**Summary of Recommendation: The Order be not confirmed**

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**Procedural Matters and Statutory Formalities**

1. *Guidance on Compulsory Purchase Process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion* was published on 29 October 2015 to reflect legislative changes and case law since 2004. This guidance replaces and cancels Circular 06/2004 '*Compulsory Purchase and the Crichel Down Rules*'. The parties were invited to comment on any implications these changes could have for their respective cases. I have taken this updated guidance and the parties' comments on it into account.
2. References to Circular 06/2004 made at the time of earlier submissions and the inquiry are retained in the interests of completeness. In my conclusions I have relied upon the new guidance.
3. At the inquiry Counsel for the London Borough of Southwark confirmed that all statutory formalities had been complied with.<sup>2</sup> The convening notice was taken as read. There were no points arising.
4. The original statutory objections and non-qualifying objection are contained in the case file. Several additional objections were made at the inquiry in support of both statutory and non-qualifying objectors. These are reported below.
5. The Objectors were not legally represented during the sitting days in April and May 2015 of the inquiry. Together with other parties they expressed concern at

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<sup>1</sup> Objections by the Aylesbury Leaseholders Group (Beverley Robinson, Judith Bos, Leslie Kerrigan, Agnes Kabuto, Julius Sangbey, Gillian Mutch, Matthew Nwamochie Ukanwa & Chineyere Jane Ukanwa, Samsom Imade Aigbe, Ruth Bosede Temilade and Rita Enuechie

<sup>2</sup> Inquiry Document 13:Formalities Bundle

- the 'inequality of arms' between the parties. The inquiry was adjourned on 1 May for reasons of time and to afford the Aylesbury Leaseholder Group (ALG) an opportunity to seek legal advice and /or representation. The Objectors unsuccessfully applied to DCLG for funding to enable them to engage legal representation.<sup>3</sup> The inquiry was adjourned again on 12 May in order that the ALG could pursue legal representation. When the inquiry resumed on 13 October 2015 the ALG were legally represented.
6. Following the May adjournment the ALG submitted an updated Statement of Case to supplement their previous Statement of Case. Both documents have been taken into account in this report. The Council also provided an Update Statement and a Rebuttal Statement in response to the ALG updated Statement of Case.
  7. The CPO has been made under section 226(1)(a) of the Town and Country Planning Act 1990 (improvement for planning purposes). The ALG<sup>4</sup> allege that it should have been made under the Housing Act 1985 or Housing and Urban Development Act 1993 which provide for the compulsory purchase of vacant, sub-standard, derelict or defective housing.
  8. The justification in the Council's Statement of Reasons relied on paragraph 11 of Appendix A of the recently withdrawn Circular. This stated that '*the re-creation of sustainable communities through better balanced housing markets is one regeneration objective for which the section 226(1)(a) power might be appropriate*'. The replacement guidance states that this power should not be used in place of more appropriate enabling powers.
  9. The powers under section 226(1)(a) are intended to provide a positive tool to help acquiring authorities use planning powers to assemble land where this is necessary to implement the proposals in their community strategies and Local Development Documents, or where strong planning justifications for the use of the power exist. It is expressed in wide terms and can therefore be used to assemble land for regeneration. In this case the Council is seeking to implement the strategy within the Aylesbury Area Action Plan (AAP) and therefore the use of s226(1)(a) is appropriate.
  10. The Land included in the CPO is subject to a restrictive covenant requiring it to be maintained as open space. Following negotiations between the Acquiring Authority and the London Borough of Bromley this land has been released from the covenant and a replacement covenant has been agreed.<sup>5</sup>
  11. The Objectors allege that there is a failure to comply with Section 100D of the Local Government Act 1972 (duty to list background papers) in respect of the September 2005 report to the Executive Committee.<sup>6</sup> They submit that due to this failure, neither the Committee members nor the public were alerted to the relevant papers including the Conisbee Report.<sup>7</sup> It is suggested that had they been aware of this information the decision to redevelop the estate may have been different. Any failure to comply with the Local Government Act 1972 is

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<sup>3</sup> Inquiry Doc 31 T Eckersley para 12

<sup>4</sup> ALG Statement of Case para 5.01

<sup>5</sup> Inquiry Doc 35

<sup>6</sup> CD8

<sup>7</sup> CD25

- outside of the jurisdiction of this inquiry. The implications of the 2005 Executive Decision in relation to the redevelopment of the estate are considered below.
12. At the opening of the inquiry the ALG requested the disclosure of a legible copy of Table 10 of the Conisbee Report, details of the funding agreement for the redevelopment. Mr Novakovic<sup>8</sup> explained were “funding applications for affordable housing and agreements for funding applications”, and an un-redacted copy of the Development Partnership Agreement (DPA). The ALG considered these documents to be necessary in order to establish the facts and to ensure a fair hearing.
  13. The Acquiring Authority provided a legible copy of the Conisbee Report in July 2015 and <sup>9</sup>explained in its Update Statement why this had not been possible previously.
  14. The ALG believes that these documents have a bearing on viability of the scheme and whether the funding allocation was linked to the provision of social rented accommodation. It was also submitted that full disclosure was relevant to the assessment of the overall well-being of the area and whether any shortfall in viability in respect of the First Development Site (the Order Land) would be made up in later phases of the overall scheme for the estate. Moreover, the AAAP identified a funding gap in relation to the entire scheme and since the CPO was being decided on the merits of the entire scheme the ALG suggest that the viability of the entire scheme should also be considered.
  15. The Council resisted the application for the disclosure of these documents on the grounds that both documents include commercially sensitive information which must be balanced against the public interest. The delivery of the dwellings on the First Development Site (FDS) is not dependent on viability.<sup>10</sup> The Acquiring Authority considered that disclosure of the funding agreement was not necessary because the DPA makes contractual provision for the delivery of target and intermediate rented units.<sup>11</sup> In addition, the planning application included the provision of affordable housing. The delivery of this affordable housing on the Order Land is not dependant on grant funding and therefore the funding agreement is not relevant to the matters before the inquiry.
  16. The request for the disclosure of these documents was considered in the light of the advice at Circular 06/2004, the prevailing advice at the time of the request. Appendix A paragraph 16 of the Circular detailed the factors the Secretary of State could be expected to consider. These included *‘(iii) the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitments from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed.’*
  17. The terms of the DPA are such that the delivery of the scheme on the FDS, including affordable housing is not dependant on viability. Since this is the

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<sup>8</sup> Mr Novakovic from the 35% Campaign represented the ALG during the April and May sitting days

<sup>9</sup> AA Update Statement para 3.6

<sup>10</sup> Neil Kirby POE Appendix 3 para 7 & CD4 p 407 para 3.2

<sup>11</sup> AA Legal note paras 59-61

scheme for which the land is being acquired the request for the disclosure of an un-redacted DPA was denied. Notwithstanding this, during the period between the May adjournment and the resumption of the inquiry in October, the Acquiring Authority reviewed the situation in the light of the relevant legal principles and recent decisions issued by the Information Commissioner's Office.<sup>12</sup> It provided a copy of the DPA with fewer redactions as part of its update statement.<sup>13</sup>

18. The new CPO guidance (Section 14 page 12) requires the Acquiring Authority to address the source of funding and the timing of the funding. The Council's evidence sets out that the provision of affordable housing, including social rented housing, was not dependant on the viability of the scheme in relation to the Order Land. The level of information provided satisfies both the guidance within Circular 06/2004 and the new guidance. There is no requirement to provide evidence of the funding for the entire scheme. Accordingly, it is not considered necessary to review the request to disclose these documents.

### **The Order Lands and Surroundings**

19. The Order Lands forms part of the Aylesbury Estate Regeneration Area and falls within the area covered by the AAAP. It comprises seven residential blocks ranging from 4 to 14 storeys in height and a total of 566 dwellings, together with ground floor garages, vacant commercial and office floorspace, open grassed space and games courts.
20. Although the Order Land is the third parcel of land to be brought forward for redevelopment within the estate, it is referred to in the Development Partnership Agreement as the First Development Site (FDS).
21. Site 1A is situated in the south western corner of the estate adjacent to the Order Land. It includes 261 homes, retail space and a community resource centre and is now complete. Construction has commenced in respect of Site 7. This was subject to a Compulsory Purchase Order confirmed in May 2013. It will comprise 147 homes (58% of which will be affordable) and is expected to be completed by 2015/16.
22. The buildings within the Order Land include seven partially linked blocks of flats and maisonettes known as Chartridge, Chiltern and Bradenham, as well as a self-contained block known as Arklow. These comprise long slab constructed blocks with garages at ground level. The dwellings are arranged around areas of semi-private open space. Many of the flats benefit from balconies which overlook Burgess Park on the opposite side of Albany Road.
23. The Order Land is no longer in commercial use other than for the infrastructure for statutory utilities and some telecommunications infrastructure on the roof of Chiltern block. Chiltern contains the former Council offices but these are no longer used. The lower floors of Bradenham were also used as offices and these are also vacant.<sup>14</sup>
24. Ellison House to the south west of the Order Land is leased to the National Offender Management Service (an office of the Ministry of Justice) and is used as

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<sup>12</sup> US1

<sup>13</sup> US2

<sup>14</sup> Statement of Reasons para 1.11

- accommodation for men who have recently been released from prison. It is Crown Land and therefore has not been included within the CPO. The Ministry of Justice has agreed that it will not be able to continue to occupy Ellison House as the redevelopment of the estate progresses.<sup>15</sup>
25. The Aylesbury Estate was constructed between 1966 and 1977 and consisted of a total of 2,750 dwellings on 28.5 hectares. It replaced Victorian houses and factories many of which were damaged during the Second World War. It was built by the Council to provide housing accommodation for rent pursuant to its statutory housing function.<sup>16</sup>
26. The estate as a whole was home to over 7,500 people and includes several schools, offices, community buildings and some shops.<sup>17</sup> The Council has recently completed a major investment programme in local schools, with three complete new builds on the estate. The Walworth Academy was completed in 2010, Michael Faraday primary school was completed in 2011 and Aylesbury New School was completed in August 2012.<sup>18</sup>
27. The appearance of the estate is dominated by slab blocks. Notwithstanding this, other dwellings differ in style and period, these include the red brick building on the Order Land and Michael Faraday Estate which comprises three storey high brick built buildings within a landscaped setting. The layout of the estate aims to separate cars from pedestrians and intersperses large residential blocks with areas of open space. Many of the dwellings within the estate benefit from balconies and some of those at ground floor level include small private gardens.
28. There is a range of community facilities on the estate including a doctor's surgery, schools and an early years unit. There are also dedicated play areas, dog exercise areas and allotments. Overall the green space within the estate is well maintained and has a tidy appearance.
29. In recent months the Order Land has been subject to unauthorised occupation. In order to secure the Order Land and protect the remaining residents' properties the Council has erected security fencing around the Order Lands and provided manned security.

### **Proposed Development**

30. The Council resolved to grant planning permission for the redevelopment of the Order Land and outline planning permission for the remainder of the estate in April 2015. Following the completion of section 106 agreements planning permission for both schemes was finally granted in August 2015.<sup>19</sup>
31. The permitted scheme is for the demolition of the existing buildings and redevelopment of the Order Land to provide 830 mixed tenure dwellings, a flexible community use/early years facility or gym, public and private open space,

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<sup>15</sup> Statement of Reasons para 5.10

<sup>16</sup> Statement of Reasons para 1.5

<sup>17</sup> Statement of Reasons para 1.12

<sup>18</sup> Statement of Reasons para 1.16

<sup>19</sup> Acquiring Authority US7



an energy centre, a gas pressure reduction station, associated park and cycle parking.<sup>20</sup>

32. The outline scheme would provide up to 2,745 mixed tenure homes, up to 2,500 square metres of employment floorspace, up to 500 square metres of retail use, 3,100 to 4,750 square metres of community use/medical centre/early years facilities and up to 3,000 square metres of flexible retail use.<sup>21</sup>

### **The Case for the Council of the London Borough of Southwark**

33. The Aylesbury Estate has been identified as in need of regeneration since the late 1990s. Over the years regeneration by way of demolition and reconstruction has been identified as the preferred way forward. Regeneration of the estate is a Council priority and is widely supported politically and by residents.<sup>22</sup>

### **Replacement of Circular 06/2004**

34. The new Guidance does not explain how it is intended to be applied, but in the Acquiring Authority's submission, it cannot be taken to have retrospective effect in relation to the preparatory stages. It will be remembered that the CPO was submitted to the Secretary of State for confirmation on 7 July 2014, long before the publication of the new Guidance. In *University of Bristol v. North Somerset Council* [2013] it was held that the statutory duty to co-operate did not have retrospective effect, in the absence of clear wording that retrospective effect was intended. To impose retrospectively substantive responsibilities which apply "in advance of a compulsory purchase order" would not be appropriate in this case.
35. In terms of the overriding tests to be applied by the Secretary of State in deciding whether to confirm the CPO there is very substantial continuity between the old guidance and new. There are no relevant substantive changes as between 06/2004 and the new Guidance affecting planning matters, well-being or alternatives in this case.
36. The over-arching test for the Secretary of State was whether the acquiring authority had sought to acquire land by negotiation wherever practical. The new guidance asks '*whether the acquiring authority has demonstrated that it has taken reasonable steps to acquire the land ... by agreement*'.
37. There are significant changes made in the new Guidance in a section entitled "*what should acquiring authorities consider when offering financial compensation in advance of a compulsory purchase order?*" Given the stage that the CPO had reached when the new Guidance was published, this part cannot sensibly be applied retrospectively, particularly given that there is nothing in the new Guidance to indicate that it should be read to have that effect. The reasonableness of the Acquiring Authority's offers in this case should not be judged against this section of the new Guidance, which was not extant prior to the Acquiring Authority making the CPO.
38. The purpose of this change seems to be to allow acquiring authorities much greater flexibility in terms of what can be taken into account in formulating its

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<sup>20</sup> Alison Squires POE para 3.8

<sup>21</sup> Alison Squires POE para 3.5

<sup>22</sup> Mr Kirby's POE para 9.2

- offers to purchase land, without falling foul of their auditors. No doubt it is intended that acquiring authorities can, in their discretion, make higher offers than open market value, in the hope of avoiding CPO objections and satellite litigation (eg challenges to planning permission and the like).
39. The Acquiring Authority is satisfied that the offers made to leaseholders were reasonable in all the circumstances. The valuation approach (in particular the use of on-Estate comparables) was supported in the Lands Tribunal decisions in the references of *Joshua* and *John*<sup>23</sup>. Plainly, it remains the case that it is not for the Secretary of State in considering the confirmation of the CPO to adjudicate on the merits of what is essentially a valuation dispute: nothing in the new Guidance can or should be read as undermining that important principle.
  40. Section 3 of the new Guidance concerns good practice in the preparatory stage. Whilst the Acquiring Authority is unable to revisit those preparatory stages, the Secretary of State should draw comfort that in this case, those new good practice suggestions in the main, have been adopted. In particular the Acquiring Authority's evidence demonstrates that meaningful attempts at negotiation have been pursued and that many of the measures listed in section 18 of the new Guidance were considered and implemented, so as to reduce as far as possible the inevitable uncertainty and anxiety suffered by owners and occupiers of the Order Land.
  41. Section 14 of the new Guidance (within part 2 "*justifying a compulsory purchase order*") contains much the same guidance as had been found in Circular 06/2004. It does not, however, repeat the guidance that a "*general indication of funding intentions will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed*". It states that "*substantive information*" should be provided.
  42. The information submitted by the Acquiring Authority demonstrates that the acquisition of the land will be funded and the scheme implemented. Funding is available now. The Acquiring Authority submits that the sums it has already budgeted are sufficient for that purpose.
  43. The new Guidance does not make reference to the Secretary of State concluding about whether there is a "reasonable prospect" that the scheme, the subject of the CPO, will proceed. That omission can only be taken to have been deliberate. Instead, the new Guidance deals with deliverability in a more general way. It allows the decision maker to take a decision "on its own merits".
  44. To the extent that there is some change between Circular 06/2004 and the new Guidance, it is submitted that it allows the decision maker greater flexibility in making a decision on the merits of the CPO. However, this case does not rest on fine distinctions about policy wording, the justification for the CPO is so compelling that the public interest decisively demands its confirmation.
  45. The new Guidance seeks to resolve "how the public sector equality duty should be taken into account in the compulsory purchase regime". It is submitted that the Acquiring Authority has had due regard to the public sector equality duty.

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<sup>23</sup> AA Objection Statement App 2

There are no relevant substantive changes as between Circular 06/2004 and the new Guidance in relation to human rights.

***Whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area***

46. The purpose for which the land is being acquired fits with the adopted planning framework for the area. The planning framework supports regeneration and the planning application in respect of the Order Land is in accordance with that planning framework.<sup>24</sup>

*Planning Framework*

47. The development plan for the area includes the London Plan 2015 Consolidated with Alterations since 2011, the Core Strategy 2011, the saved policies of the Southwark Plan 2007 and the Aylesbury Area Action Plan (adopted January 2010).

48. Walworth and the Aylesbury Estate are identified as a regeneration area where London Plan policy 2.14 provides that the Mayor will work with partners to co-ordinate sustained renewal.<sup>25</sup> Policy 3.8 indicates that Londoners should have a choice of homes that they can afford which meet their requirements for different sizes and types of dwellings. Policy 3.9 provides support for building mixed and balanced communities which include a range of dwelling types and tenures. Policy 3.14 advises that the loss of housing, including affordable housing, should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floorspace.

49. The Core Strategy vision for Aylesbury Estate states that the Council will use the guidance in the AAAP to work with stakeholders to achieve a phased redevelopment of the Aylesbury Estate which will deliver around 4,200 new homes over the 15 year lifetime of the Core Strategy.<sup>26</sup> The target for new homes on the estate was reiterated in Core Strategy policy 5. Core Strategy policy 6 requires as much affordable housing as is financially viable to be provided, including 2,100 affordable homes in the AAAP area.

*AAAP*

50. Across the AAAP area, policy BH3 requires 50% of homes to be affordable, of these 75% should be social rented and 25% intermediate. Policy BH4 requires a mix of homes with at least 20% to have three bedrooms or more. The Mayor has formally confirmed that the Core Strategy and AAAP, are in general conformity with the London Plan.

51. The evidence base to the AAAP included a number of background and baseline papers. These provided information and evidence on the estate, heritage and design, biodiversity, demographics, education, employment, health, housing and transport. Detailed topic specific papers were also prepared in relation to a number of key issues including tenure and mix, open spaces, demolition and

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<sup>24</sup> Mr Kirby's POE para 9.3

<sup>25</sup> CD22 page 56

<sup>26</sup> CD21 para 4.37

- delivery.<sup>27</sup> The Sustainability Appraisal assessed the potential impact of the AAAP on a range of economic, social and environmental indicators and an Equalities Impact Assessment looked at the potential impact of the AAAP on different groups.<sup>28</sup>
52. The AAAP was prepared in consultation with the local community and the benefits that regeneration would bring to the area were strongly supported through all stages of the consultation. The formal consultation on the AAAP was supported by the enabling team, which comprised 40 members representing a range of interests and backgrounds.<sup>29</sup>
53. The Examining Inspector concluded that, subject to the recommended amendments, that the AAAP DPD could be considered sound and would satisfy the requirements of section 20 (5) of the Planning and Compulsory Purchase Act, 2004 and would accord with the advice in PPS12. He thus found that the evidence base effectively supported the policies within the AAAP.<sup>30</sup>
54. Wholesale demolition of the Aylesbury Estate has been in prospect since at least 2001 following the vote regarding the stock transfer of the existing tenancies to a new landlord. Objectors see the AAAP as conflicting with the 2001 ballot in which a large proportion of tenants indicated that they wished to remain in their present council rented accommodation. A similar point has been made in objection to the CPO.
55. The AAAP Inspector noted this concern and concluded that: *'there is a need to distinguish between the specific housing and tenancy issues which formed the focus of the earlier participation exercises and the much wider remit of the AAAP consultation, undertaken to inform the preparation of a spatial plan. I do not consider that there is any fundamental conflict between the outcomes of the consultation exercises carried out by the council in recent years'*.<sup>31</sup>
56. The stock transfer ballot was the appropriate process given what was proposed at the time, but it did not fix the future of the estate. There has been a total failure on the part of the objectors to appreciate the fact that the AAAP provides a clear strategic framework for the redevelopment of the Aylesbury Estate.
57. The Inspector reporting on the CPO in relation to Site 7 relied upon the AAAP. He stated that the planned redevelopment of the Order Lands is wholly in accordance with the adopted AAAP.<sup>32</sup> That conclusion was relied upon in turn by the Secretary of State, he found that a compelling case in the public interest for confirming the order had been made.<sup>33</sup> The Acquiring Authority submits that the Inspector's reasoning and conclusions in relation to Site 7 should apply to the Order.
58. The proposal would provide 830 dwellings on the Order Land which would be an increase of 264 dwellings. It would therefore help to meet the aims of AAAP

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<sup>27</sup> Alison Squires POE para 4.80

<sup>28</sup> Alison Squires POE para 4.81

<sup>29</sup> Alison Squires POE para 4.84

<sup>30</sup> Alison Squires POE para 4.82

<sup>31</sup> CD3 Inspector's Report para 2.8

<sup>32</sup> CD11 Inspector's Report para 28

<sup>33</sup> CD11 SoS Decision para 8

policy BH1 which seeks to provide a net increase of 1,450 new homes across the estate. The delivery of additional homes would also support Core Strategy policy 5 and London Plan policy 3.3. Increasing housing supply is also a key principle of the National Planning Policy Framework (NPPF).

59. There are two areas of dispute relevant to the planning framework for the Order Land. The first is whether the proportion of affordable housing intended by the AAAP can be secured, and in particular whether the correct amount of social rented housing will be provided. The second is whether the policies within the NPPF,<sup>34</sup> the London Plan,<sup>35</sup> the Core Strategy and the AAAP<sup>36</sup> which seek to secure the creation of mixed communities, would when implemented produce gentrification and/or more social cleansing.

#### *Affordable Housing*

60. In terms of the mix of affordable/market housing, and in terms of the social rent/intermediate rent tenure split the affordable housing will be provided broadly in accordance with the AAAP. The precise numbers can be seen on the agreed table.<sup>37</sup> Although the figures were not disputed by the Objectors they were not satisfied that the social rented housing would be provided.
61. The scheme would result in the loss of 105 affordable rented units.<sup>38</sup> However, the Mayor's Housing Supplementary Planning Guidance advises that calculations as to whether there has been a loss of affordable housing can be made on the basis of habitable rooms. There are currently 1,397 habitable rooms of affordable housing on the Order Lands and the scheme proposes 1,394 habitable rooms. Consequently there will be a loss of three affordable habitable rooms.
62. The resolution to grant planning permission was subject to various conditions including the completion of an appropriate legal agreement and referral to the Mayor of London. It was also subject to a specific provision which sought to ensure that reference was made within any legal agreement to guidance dealing with the different types of affordable housing, so as to ensure that social rented housing is provided as intended. The legal agreement was executed on 15 August 2015. Since then further clarification has been agreed so as to deal directly with detailed drafting points made by the Objectors in relation to securing the social rent for the new affordable rent tenure.<sup>39</sup>
63. The Objectors are concerned that the preferred form of affordable housing tenure is not secured and may not be delivered. While the affordable rent tenure is supported by the Government and the Mayor of London, at a more local level (the London Borough of Southwark, local residents and the 35% Campaign Group), it is judged that the resulting rent from that tenure is not affordable to those who need affordable housing in the area. That is why a social rent is preferred.

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<sup>34</sup> NPPF para 50

<sup>35</sup> London Plan Policy 3.9

<sup>36</sup> AAAP policy BH3 (CD2 p69)

<sup>37</sup> Inquiry Doc 17

<sup>38</sup> Inquiry Doc 17

<sup>39</sup> Inquiry Doc 62

64. In the case of Bermondsey Spa<sup>40</sup>, the Acquiring Authority's investigations indicated that there was a difference between what the Council had originally sought to achieve on the site and what in fact has been delivered. The Council investigated this matter further during the adjournment, and took advice about the correct interpretation of the section 106 planning obligation. As a result of that process, the Council as local planning authority has decided not to take any further action. As the submitted note on affordable rent demonstrates, no further investigation or other action was necessary in relation to the other examples referred to on behalf of the ALG.<sup>41</sup>
65. The only outstanding issue in relation to affordable housing is whether the proportion of affordable housing intended by the AAAP can be secured. In particular, whether the correct amount of social rented housing will be provided. The same local campaign group who objected to the grant of planning permission for the FDS and outline schemes at the planning committee on 23 April 2015 (the 35% Campaign) has made similar points in opposition to the CPO. At the planning committee that campaign group was content to accept that policy compliant affordable housing would be provided if the resolution required the incorporation of reference to specific guidance within the section 106. The s106 agreement reflects that resolution.<sup>42</sup>
66. In order to narrow the differences between the parties the Acquiring Authority agreed to enter into a deed of clarification to make the suggested amendments.<sup>43</sup> This was communicated to the Objectors on the Friday before the inquiry resumed in October. Two alternative and mutually inconsistent amendments were suggested, neither of which were helpful or necessary.<sup>44</sup>
67. The definition of social housing within the s106 relies on the application of the Homes and Community Agency Rent Standard Guidance Appendix 1 which is contained within the section 106 at Schedule 4. It makes detailed provision for the calculation of the rent which can be charged, based on a national formula set out in that document.
68. In addition, schedule 3 of the DPA sets out minimum requirements including the delivery and tenure mix of 50% of affordable residential units and 50% private residential units (calculated by a habitable rooms) over the development period. Of the affordable residential units 75% must be target rent units. These target rents are set by reference to the formula within the Homes and Community Agency Rent Standard Guidance Appendix 1
69. The Objector's closing submissions would appear to make three points in relation to the affordable dwellings. Firstly that the Bermondsey Spa example means that the Acquiring Authority would not enforce a section 106 agreement even if it were entitled to do so; secondly, that there is concern and anxiety locally about what tenure will be provided; and that the email from Notting Hill Housing Trust

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<sup>40</sup> A housing regeneration area within the borough

<sup>41</sup> Inquiry Doc 30

<sup>42</sup> Inquiry Doc 16 resolution 6

<sup>43</sup> Inquiry Doc 62

<sup>44</sup> ALG Oral submissions

(NHHT) dated 24 September 2015 suggests rents which the objectors are unhappy about<sup>45</sup>.

70. In response, the Bermondsey Spa example does not offer any support for the proposition that where the Acquiring Authority is entitled to enforce, it fails to do so; concern and anxiety have to be well founded in order to justify any further changes to the section 106. They are not, therefore no further changes are warranted. NHHT did provide details of prospective rent levels in the form of a table.<sup>46</sup> The table includes the information asked for, namely what rents were included by NHHT in its bid for funding in March 2014. This was before the DPA was agreed and long before the planning application had been submitted.

#### *Gentrification and/or social cleansing*

71. The NPPF, the London Plan and the AAAP seek to secure the creation of mixed communities. On behalf of the objectors, Professor Lees acknowledged that the mixed communities policy has long underpinned the regeneration of the Aylesbury Estate. Her position, namely that such policies produce gentrification and the displacement of public housing tenants, is one of fundamental opposition to national and regional and local planning policy.
72. To reject a CPO on the basis of the social policy position taken by Professor Lees, one of self-avowed opposition to that planning framework, would be to drive a coach and horses through the established approach to planning CPOs. Notwithstanding this, what is proposed pursuant to the CPO is a scheme which brings not only new housing (50% affordable 50% private), but also significant improvements to the urban environment, for the benefit of everyone living there.
73. Moreover, the diagrams submitted by Professor Lees<sup>47</sup> only show the destinations of those who have moved away from the area and exclude those who remained within the borough. Therefore her figures do not provide an accurate or reliable depiction of the destination of all former residents.

#### *Conclusion*

74. The CPO could not be more securely set within the local planning framework given that the AAAP is a development plan document which provides for the redevelopment of the Aylesbury Estate, of which the Order Lands forms a significant part. That local planning framework is in turn consistent with the provisions of the London Plan and the NPPF. It is submitted that there is unlikely to be any planning impediments to the delivery of the scheme.
75. In the Acquiring Authority's submission, when considering the merits of the CPO it is important to appreciate that although refurbishment of the Estate has in the past been regarded as an option (subject to the availability of funding), the AAAP resolved the matter decisively in favour of redevelopment. The Order is sought for a particular purpose, as set out within the Order itself. That purpose reflects the strategic planning framework, in particular the AAAP.

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<sup>45</sup> Objectors Updated Statement of Case(USC) Tab 9

<sup>46</sup> Objectors USC Tab 9

<sup>47</sup> Professor Lee's statement page 6 & 7

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## **Well-being**

76. The Acquiring Authority relies upon the well-being benefits arising from the redevelopment of the Order Land. These benefits are compelling. The redevelopment of Site 1A and Site 7 provide an indication of what is likely to happen post-confirmation. The Acquiring Authority does not need to demonstrate that there is a reasonable prospect of the development outside of the Order Land area coming forward, but part of the justification for confirming the CPO is that it is necessary to maintain momentum to ensure that the AAAP vision is not frustrated. To that extent, it is legitimate to consider the future of the wider area.
77. The scheme would contribute to the creation of a truly mixed community. It would include a purpose designed community space, an extra care facility, and bespoke facilities for people with learning disabilities.<sup>48</sup> The benefits which would arise from the scheme include the provision of well-designed new affordable and market housing, new public open space, a fully permeable layout, with clear pedestrian and cycle routes through the development.<sup>49</sup>
78. The number of homes across the estate would be increased by about 1,225 to 3,983.<sup>50</sup> This would help to meet the need for homes identified in the London Plan.<sup>51</sup> The AAAP aims to create more mixed communities. The vast majority of the estate comprises social rented housing. This approach also accords with Core Strategy policy 6 which requires a minimum amount of private housing in areas of Southwark currently dominated by social housing in order to ensure that all areas provide a range of housing types and tenures.
79. Policy BH5 sets minimum sizes for new dwellings within the AAAP area.<sup>52</sup> These are Parker Morris plus 10% for social rented housing, for intermediate housing Parker Morris plus 5% and for private housing the Parker Morris standards. The standards should help to address overcrowding and ensure ample space for future occupants.
80. The Environmental Statement sets out that the scheme would generate an expected 1,847 person years of construction employment. This equates to 307 temporary construction jobs per year<sup>53</sup>. It is estimated that the Order Lands would provide between 4 and 40 jobs depending on the specific use of the flexible community use/early years/gym space. The outline scheme is expected to provide between 194 and 458 jobs compared to the existing 357 jobs on the estate at present. In addition the Environmental Statement states that the FDS is expected to increase spending in the local area by about £7.4 million a year compared to existing economic spending levels.<sup>54</sup> This would provide a positive economic uplift for Southwark.

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<sup>48</sup> Catherine Bates POE para 6.9

<sup>49</sup> Statement of reasons p9-12 & Statement of Case p8-11

<sup>50</sup> Alison Squires POE para 6.19

<sup>51</sup> London Plan para 3.13

<sup>52</sup> AAAP Table A6.1 page152

<sup>53</sup> CD41 para 7.5.11

<sup>54</sup> CD41 para 7.6.12



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81. Taking account of a number of indices the estate has been identified as an area of deprivation. These indicate that the estate is within the 20%-30% most deprived super-output areas in the country.<sup>55</sup> Amongst other matters, these indices relate to income, educational attainment and overcrowding. The increase in the number of family dwellings proposed by the scheme would assist with easing overcrowding.
82. There is an urgent need to improve the built environment of the Aylesbury Estate. This has commenced through the redevelopment of sites 1A and 7 as well as wider improvements to the surrounding area, including three new schools and improvements to Burgess Park. The estate suffers from poor quality design and a lack of interest between different buildings. The policies within the AAAP aim to deliver good urban design and high quality architecture. The AAAP also seeks to address the existing lack of permeability and perceived unfriendliness of the streets. Policy PL1 sets out detailed requirements for the streets, which should be well-designed is attractive public spaces. It also seeks to ensure a high quality network of public open spaces. The redevelopment of the whole estate greatly improves the green spaces and public realm of the area creating different sized open spaces for different uses. Three new pocket parks are proposed at Westmoreland Square, Westmoreland Park and Portland Park.<sup>56</sup>
83. The existing buildings have poor SAP (energy efficiency) ratings and higher than average carbon dioxide emission rates.<sup>57</sup> Although the Code For Sustainable Homes has now been withdrawn the whole scheme has been designed to meet the previous Code Level 4. Consequently, the new dwellings will be much more sustainable than the existing.
84. The existing residential blocks present significant technical challenges in terms of maintenance and service life. They fall short of aspects of the current building standards. The problems include the condition of the external fabric of the buildings, particularly the concrete panels, due to water ingress and a corrosion of the steel reinforcement bars; issues relating to the structural robustness of the five and six storey blocks; the internal fabric of the buildings together with the complexities of access and maintenance to internal services encased in the structure; and the poor thermal performance of the buildings compared to current building standards.<sup>58</sup>
85. The CPO Inspector for Site 7 acknowledged that such problems were well documented and found that *'the buildings on the estate were beyond economic repair, and even if they were repaired and refurbished, they would retain their appearance and would remain in conflict with modern building standards'*.<sup>59</sup> The AAAP Inspector reached a similar conclusion. He found that there were fundamental shortcomings in the existing buildings and that refurbishment would be unlikely to achieve satisfactory living conditions in the long term. The AAAP and Site 7 Inspectors both acknowledged the poor environmental quality of the estate.<sup>60</sup>

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<sup>55</sup> CD29 paras 4.3-4.6

<sup>56</sup> Alison Squires POE para 6.29

<sup>57</sup> Alison Squires POE para 6.31

<sup>58</sup> Catherine Bates POE para 4.2

<sup>59</sup> CD11 page 674 para 26

<sup>60</sup> CD3 para 2.3 and CD 11 Inspector's Report para 26

86. Although the red brick block on the FDS does not suffer from all the same technical issues as the larger blocks, the indications are that they are at the end of their service life. These issues include poor thermal performance in comparison with current building standards, poor internal space standards and no individual or external amenity space.<sup>61</sup>
87. The condition of the buildings on the estate does not in itself present a case for demolition and redevelopment. However, it is one of the compounding factors cited within the AAAP. The other fundamental issue is the estate layout and the poor urban environment this presents. Even if the condition of the building fabric were addressed, many negative aspects would remain and only a compromised solution would result.<sup>62</sup>
88. The proposed design for the Order Lands is comparative in quality with the two other new residential sites in the AAAP area. Phase 1a, which is now complete and fully occupied has been the recipient of numerous awards including the 'Best New Place To Live' category of the London Planning Awards in February 2013. A high standard of design is also exhibited in the new Michael Faraday School immediately to the northeast of the Order Land.<sup>63</sup>
89. The scheme aims to create a different and improved urban environment including the creation of a varied skyline. The benefits of the scheme include a range of different sized units evenly distributed across the different tenures. A high proportion of units are suitable for families. Some units of each tenure overlook the park. The increased density of the scheme has been managed to provide suitable massing in terms of scale and variety. The tall blocks across the park frontage are slim and compact in footprint to enable good sunlight to penetrate into the development. The concentration of units in these blocks contrasts with the low density houses and the number of open spaces<sup>64</sup>. There would also be improvements to permeability, the creation of high quality open spaces and good quality living accommodation in blocks which are designed to meet modern standards and to be highly sustainable.<sup>65</sup>

### **Viability**

90. Circular 06/2004 stated that a general indication of funding intentions, and of any commitments from third parties, would usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. In this case that threshold is exceeded. Contrary to the case put by the Objectors there is no reason to depart from the viability test within the Circular.
91. Under the DPA the Acquiring Authority bears overall responsibility for land assembly and the delivery of vacant possession of the land proposed for redevelopment. It has identified resources in order to meet that obligation.<sup>66</sup>

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<sup>61</sup> Catherine Bates POE para 4.5

<sup>62</sup> Catherine Bates POE para 4.7

<sup>63</sup> Catherine Bates POE para 6.2

<sup>64</sup> Catherine Bates POE para 6.8

<sup>65</sup> CD3 page 222 para 3.4

<sup>66</sup> Neil Kirby POE para 3.19

92. The delivery of the FDS is not contingent upon any viability assessment. NHHT is obliged to develop the FDS irrespective of viability. However, NHHT is satisfied that the development proposed is viable.<sup>67</sup> The NHHT is fully committed to the delivery of the FDS development and funding is in place. There is recent board approval from NHHT's detailed five year financial plan, which includes the redevelopment costs of the FDS.<sup>68</sup> Given NHHT's financial strength the contractual and Board level commitments offered provide considerable reassurance that there is a reasonable prospect that the scheme will proceed.<sup>69</sup>

### ***Deliverability***

93. Overall, there is at least a reasonable prospect that the redevelopment of the Order Land will proceed. The Objectors' Statement Of Case suggests that the delivery of the scheme could be impeded by the restrictive covenant in relation to the open space on the estate, the Acquiring Authority's inability to acquire Ellison House, or that the CPO could have been made covering a larger area.

94. A covenant has been agreed with the London Borough of Bromley in respect of the open space.<sup>70</sup> It is therefore unlikely to constitute an impediment and the agreed covenant has now been submitted.

95. The Acquiring Authority's update statement explains the work undertaken in order to provide the replacement facility sought by the Ministry of Justice.<sup>71</sup> Following agreement with the Ministry of Justice the Council commissioned architects to undertake an initial feasibility study in relation to a vacant site within the Aylesbury Estate Masterplan Area. This confirmed that the site was feasible for a replacement facility. The feasible option is shortly to be consulted upon and the details have already been worked up through the feasibility process in respect of the proposed facility and its location.<sup>72</sup> These details have not been provided to the inquiry because it is intended that they will be made public for the first time through the consultation process which will take place prior to the submission of a planning application.

96. It is not necessary to include a wider area within the CPO and the failure to do so does not constitute an impediment to the delivery of the First Development Site.

### ***Alternatives***

97. Due to the way in which the particular purpose of the CPO has been expressed, it will be apparent that nothing short of the redevelopment of the Order Land will achieve that purpose. That is consistent with that planning framework for the area.

98. The Objectors consider that there is an alternative to the CPO that they would prefer. This takes the form of refurbishment of one sort or another. A significant amount of work was carried out by the Acquiring Authority in the period leading up to 2005 in order to consider whether the estate could be refurbished.

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<sup>67</sup> Rosemary Houseman Oral evidence

<sup>68</sup> Ms Houseman POE para 5.5

<sup>69</sup> Ms Houseman POE paras 5.1-5.4

<sup>70</sup> Inquiry Doc 35

<sup>71</sup> AA's Update Statement page 5-6 section 5

<sup>72</sup> Neil Kirby Oral evidence

- Although the Objectors have been provided with as much of that information as they have sought, they have not presented it as an alternative scheme capable of delivery.<sup>73</sup>
99. There is no planning permission in place for any alternative scheme, or any evidence dealing with whether it is likely that any necessary planning permission would be granted for an alternative scheme. There is no updated costing of any alternative scheme or convincing evidence in relation to funding submitted on behalf of the Objectors. Professor Rendell referred to a comparator, the Six Acres Estate, but there was no detail about the way in which that scheme was funded. Mr. Kirby explained that some of the funding would have been provided by the Arm's Length Management Organisation (ALMO) involved in that scheme. However, that source of funding was considered in 2005 by the Council and there remained a substantial funding gap.<sup>74</sup> Even if the refurbishment scheme were to be delivered it would not achieve either the direct purpose of the CPO, nor the equivalent benefits. That was the conclusion of the AAAP Inspector<sup>75</sup> and the CPO Inspector to Site 7.<sup>76</sup> The latter's conclusion focused on the urban design and landscape of the estate which he described as 'less than poor'.
100. Dr Crawford had to accept that even if a minutely detailed cost benefit analysis had to be conducted, then it could not be against a refurbishment scheme, since that is not a deliverable plan B. There is no more merit in the alternative proposal by Professor Rendell that some other cost benefit analysis is necessary or appropriate.
101. The Acquiring Authority intended to embark upon a scheme of refurbishment until it had to review the position in 2005 as a result of changing circumstances. These included a lack of available funding. It is unfair to say as the ALG do, that there is no evidence of any effort to obtain funding support for the refurbishment option.
102. In respect of the refurbishment option the Executive Committee Report confirmed that *'Critical to the success of this rollout across the estate was to be the identification of additional funds to match the NDC resources available. A range of funding sources in addition to the remaining £24M NDC capital were identified (including an arm's length management organisation, sites sales and shared equity) which could potentially deliver a combined income of £44 M. However, this is a generous estimate of the capacity of these sources of funding and even on this basis, the roll on of the south west corner programme to the rest of the estate had a current funding shortfall of up to £30M.'*<sup>77</sup>
103. There is no deliverable alternative scheme, let alone one which would be delivered within any particular timescale. The Objectors' suggested alternative to the CPO is inchoate, uncosted, unfunded and incapable of delivery.
104. The Acquiring Authority would have pursued refurbishment, had it been feasible and deliverable. It was decided in 2005 that it was not. The AAAP

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<sup>73</sup> AA Update report para 3.4

<sup>74</sup> CD8 p586 para 3.2

<sup>75</sup> CD3 p219 para 2.3 & p222 para 3.4

<sup>76</sup> CD11 p674 para 26

<sup>77</sup> CD8 para 3.2

process considered a hybrid option which included refurbishment. The preferred strategy was submitted for examination and found sound by the AAAP Inspector.<sup>78</sup> During the AAAP process it was open to those responding to the consultation to suggest whatever alternatives they thought fit.

### **S.149 Equality Act 2010**

105. The public sector equality duty "PSED" arising from section 149 imposes a procedural requirement on the decision-maker to "have due regard" to various specified equality issues when taking their decisions. At each step in the process, where relevant and applicable, the Acquiring Authority has taken into account the public sector equality duty.
106. An Equalities Impact Assessment was undertaken in January 2009 as part of the AAAP process. It considered whether the way the policy/strategy was being, or will be implemented could be discriminating against any particular individual or group, or be potentially damaging to relations between different groups. It concluded: *"The preferred options and revised preferred options aim to contribute to eliminating discrimination, promoting equality of opportunity and promoting social cohesion and good community relations.... an effective housing management strategy and plan will be put in place to ensure that the negative impacts of the redevelopment are minimised. In the long term the plan should help to improve relations between different groups and should not discriminate against any particular individuals."*<sup>79</sup>
107. This assessment specifically considered how the impact on the leaseholders could be captured and mitigated. It recommended introducing a package of other measures including compensation for leaseholders to offer the widest possible choice of rehousing opportunities.<sup>80</sup> Therefore the potential impact on the leaseholders was considered at that stage.
108. The Council has put in place a package of rehousing options that enable resident leaseholders to continue to own a home in the area.
109. Subsequent decisions revisited the community impact of what was proposed. These include the selection of the Council's Development Partner<sup>81</sup> and the reports dealing with the planning application for the FDS and the wider area. These both addressed the public sector equality duty in detail.

### **Human Rights**

110. The Council has considered the human rights of the Objectors to the CPO and has considered the human rights of all affected parties throughout the regeneration process. The Council considers that the exercise of its compulsory purchase powers in this case is justified by the reason that it is in the public

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<sup>78</sup> Inquiry Doc 9 Issues and Options Report Section 2.3

<sup>79</sup> AA Rebuttal Statement Appendix RS3

<sup>80</sup> AA Rebuttal Statement Appendix RS3 p6

<sup>81</sup> CD7 paras 114-124

interest, authorised by law and necessary and proportionate towards meeting the Council's objectives of regeneration.<sup>82</sup>

### **Other Matters**

#### *Rehousing*

111. The Council is continuing to negotiate with leaseholders. Since the Order was made the Council has secured vacant possession of 17 residential properties. There remain 16 leasehold interests, including eight resident leaseholders, and one secure tenant on the Order Land. The tenant has been allocated a new build property that is suitable for their needs and is due to be handed over in November 2015.
112. Four of the eight non-resident leaseholders are in the process of evicting private tenants living in these properties in order to complete the sale of their properties back to the Council. A number of resident leaseholders are progressing options in relation to low cost home ownership in the form of shared equity at Camberwell Fields and others have applied to the council for rehousing assistance.<sup>83</sup>
113. 55 dwellings have been acquired by agreement. Each leaseholder received two offers. The second one followed the Land Tribunal decision in respect of *Joshua and John*. The Tribunal endorsed the Council's approach to valuation and surveyors' costs.<sup>84</sup>
114. The Council has offered a range of rehousing options to leaseholders. These have been based on their accommodation needs plus one additional bedroom and are assessed on the basis of individual leaseholders' circumstances. They are not available to non-resident leaseholders.
115. In summary the options are rehousing as a Council tenant or NHHT tenant where appropriate, shared ownership or shared equity. The financial information sought is to ensure the eligibility and affordability of the preferred tenure. The compensation package has implications for the tax payer and therefore it is right that the financial circumstances of leaseholders seeking re-housing are assessed.
116. The Council has received complaints in respect of a number of issues on the Order Land including problems with the delivery of post, concerns from Royal Mail regarding the perceived safety of their staff, cleaning and grounds maintenance, residents experiencing difficulty in obtaining successful credit checks using their addresses within the Order Land and residents experiencing difficulty at the secure entrance to the Order Land because the security guards are allegedly not in attendance 24/7.
117. Efforts are being made to address these concerns. The Council has arranged for one-off cleaning and grounds maintenance as necessary in addition to the regular cleaning and maintenance cycles. Arrangements for the erection of external post boxes adjacent to the secure entrance are being put in place to address difficulties with postal deliveries.

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<sup>82</sup> Neil Kirby POE para 9.8

<sup>83</sup> AA Update Statement Section 6

<sup>84</sup> AA Objection Statement App 2 para 93

118. The duty to rehouse applies post confirmation of a CPO, once it has been implemented by the notice to treat/notice to enter or general vesting declaration procedure. Secondly, the obligation is to "secure that [a person] be provided with such other accommodation" where "suitable alternative accommodation on reasonable terms is not otherwise available to that person". By way of example, in *the R. (on the application of East Hertfordshire)* (1991) 23 HLR 26 case, the local authority's decision to rehouse a family in temporary accommodation 35 miles away from their original home was not found, on the facts of that case, to constitute a breach of the section 39 obligation.<sup>85</sup>

#### *Legal Note*

119. A legal note covering a number of matters was also submitted. These points are mostly covered within the case above.

#### **Overall**

120. The Council has carefully considered the tests for making a CPO as set out in the Circular. It has a clear purpose and objective for the use of the Order Land. The redevelopment is set securely within the mature and detailed planning framework. Resources are available and have been committed to the redevelopment, to ensure that it is delivered within a reasonable timescale. The Council considers that the relevant tests have been met and commends the Order.<sup>86</sup>

121. Despite diligent and well documented efforts the Council has been unable to obtain vacant possession by negotiation and accordingly has used its compulsory purchase powers in order that the regeneration can proceed. It considers that the use of these powers is lawful and proportionate.<sup>87</sup>

122. There is a compelling case in the public interest having regard to all the circumstances of this case. The CPO is a last resort, and it is required because attempts to acquire by agreement have failed. The proposed redevelopment will bring with it very significant well-being benefits as the Council's evidence demonstrates.

123. Consistency in decision making is an important administrative principle, which will need to be considered carefully in this case, given the previous decisions in relation to the AAAP and Site 7.<sup>88</sup> These addressed similar issues to the ones raised in the present CPO and like cases should be decided in a like manner.

#### **The Objections**

##### **The case for the Statutory Objectors the Aylesbury Leaseholders Group**

124. The Statutory Objectors presented their cases jointly and called a number of professional witnesses. This evidence is summarised below. Any additional points

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<sup>85</sup> Legal Note paras 39 & 40

<sup>86</sup> Mr Kirby's POE para 9.9

<sup>87</sup> Mr Kirby's POE para 9.6

<sup>88</sup> North Wiltshire District Council v. Secretary of State for the Environment (1993)

made by individual leaseholders, including personal circumstances and human rights, are addressed separately.

*Replacement of Circular 06/2004*

125. The updated guidance is relevant to a number of issues which were raised at the Inquiry. In particular the following paragraphs of the updated guidance are relevant: paragraph 73 (social rent and gentrification), paragraphs 13-15 (viability and delivery), paragraphs 76, 109, 113 (refurbishment), paragraph 6 (Equalities Issues) and paragraph 2 in respect of Human Rights.<sup>89</sup>

***The purpose for which the land is being acquired does not fit in with the adopted planning framework for the area***

*Provision of Social Rented Housing*

126. AAAP policy BH3 requires 50% of new homes in the AAAP area to be affordable and 50% private. In addition, it requires 75% of the affordable housing provided to be social rented. Core Strategy Strategic Policy 6 has a similar intent.

127. The Objectors aver that local people are very concerned that the replacement social rented housing on the new Aylesbury Estate will end up being for affordable rent at up to 80% of market rent.<sup>90</sup> The median income of Council tenants is just £9,100 per annum.<sup>91</sup> In October 2014 social rents within the area were on average £97 per week and affordable rent at 80% market rent was £239 for a 1-bed flat in Walworth.<sup>92</sup> As at July 2015 the figure for social rents remained at about £97, whilst 80% of market rent is now about £267 per week in SE17 (the area where the Aylesbury Estate is located) and £306 in Southwark.<sup>93</sup> The Acquiring Authority's latest 'Affordable Rent Study' shows that even at just 50% of market rent, the minimum income required to be able to afford to rent on the new Aylesbury Estate would be £34,848 (1-bed); £40,152 (2-bed); £52,008 (3-bed); £70,008 (4-bed).<sup>94</sup>

128. Social housing is a broad umbrella term statutorily defined in the Housing and Regeneration Act 2008. It encompasses both social rented and affordable rented housing. The policy aim behind social rented housing is that it enables people on low incomes to remain living in areas which have become property hotspots, without being forced into the poverty trap of dependency on housing benefit. Social rented housing should be determined by the National Rent Regime and not as a percentage of market rent. Rent levels for social rented housing are determined on the basis of a combination of local property values and local wages: 30% is based on relative property value compared to the national average; 70% is based on relative local earnings compared to the national average.<sup>95</sup>

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<sup>89</sup> Objectors' further Submissions in relation to Updated Guidance

<sup>90</sup> Laura Fudge Oral Evidence

<sup>91</sup> Inquiry Doc 45 Southwark Key Housing Data 2012

<sup>92</sup> ALG1 para 2.08

<sup>93</sup> Objectors' Update Tab 11

<sup>94</sup> Inquiry Doc 47 Tab

<sup>95</sup> OCD 10 HCA Framework for Social Housing: Annex A



129. Affordable rented housing is the product of a Government policy introduced in 2011. Under the affordable rented housing system, councils and housing associations are encouraged to bring in resources to fund house building. Such resources include converting social rent houses to affordable rent houses when they become empty. In these circumstances for every affordable rent property that is built, one or more social rented houses will be lost.<sup>96</sup>
130. The policy of converting social rented accommodation into affordable rented accommodation is controversial. It has been described by its opponents as 'social cleansing' in so far as the policy takes advantage of rising property and rental prices in the private sector at the expense of poor communities on low incomes'.<sup>97</sup> It is unclear, whether upon the expiry of a social rented tenure the new affordable rent tenure would carry the same security and rights of succession. The section 106 agreement does not secure tenants in perpetuity in accordance with the London Plan. Consequently those who are currently entitled to social housing will become dependent on benefits and will be dispersed after a generation.
131. The Development Partnership Agreement between the Council and the Developer does not include any definition of social rents but relies on affordable and target rents.<sup>98</sup>
132. Ms Houseman was referred by Mr Novakovic to the statement made by the Mayor of London on 25 March 2015. This confirmed that although £92,258,837 was allocated to NHHT, only 81 homes for social rent would be provided.<sup>99</sup> Ms Houseman stated that the social rent homes to which the Mayor had referred were not homes on the Aylesbury Estate. She confirmed that funding had only been allocated for Affordable Rent housing at the Aylesbury Estate and that social rented accommodation fell into the 'subset' of 'capped affordable rent'. She agreed that Affordable Rent equates to any rental sum up to 80% of market rents. She went on to say that there was not a massive difference between social rent units and the target rent units.
133. NHHT is a supporter of affordable rent and made submissions to this effect in its response to the formal consultation on the Government's 2011 Social Housing Reforms.<sup>100</sup> The Objectors' position is that the approach of NHHT is not consistent with the requirements of the Development Plan and is likely to fail to comply with the terms of the AAAP.
134. On 24 September 2015 NHHT replied to an information request that had been submitted by the 35% Campaign. NHHT provided details of the prospective rent levels in the form of a table.<sup>101</sup> The rents range from 35% to 52% of market rent. The disclosed figures indicate that the scheme underlying the Order will not meet with the requirements of policy BH3 of the AAAP.

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<sup>96</sup> Objectors' Update Tab 6 Guardian Article

<sup>97</sup> Objectors' Statement of Case (Oct) para 8

<sup>98</sup> CD4 DPA p2 & p37

<sup>99</sup> Objectors' Statement of Case (April) para 2.16

<sup>100</sup> Objectors' Statement of Case (Oct) para 9

<sup>101</sup> Objectors' Update Tab 9

135. The Section 106 agreement dated 5 August 2015 appears to remedy the defect in relation to the Order Land. However it is clear that the Acquiring Authority intends to proceed, contrary to policy BH3 of the AAAP, in relation to the remainder of the scheme. The section 106 agreement refers to social rented FDS, but there is no such definition for the outline development site.<sup>102</sup>
136. The Objectors are anxious to prevent a repeat of the Bermondsey Spa development, in which NHHT failed to comply with the section 106 agreement and Southwark Council failed to enforce the terms of that agreement. In the Bermondsey Spa scheme NHHT delivered affordable rent when it was required to deliver social rent under the Section 106 Agreement. The explanatory note submitted by the Council confirms that 44 affordable rented homes were delivered in place of social rented homes at Bermondsey Spa.<sup>103</sup> The Council previously argued that if its *"interpretation is correct and delivery has not been in accordance with that obligation then the Council will need to address that as a breach of planning control in the ordinary way"*. The Acquiring Authority now states that it has taken legal advice and will not be taking enforcement action.<sup>104</sup> In the light of this decision the Objectors are not confident that the new wording of the Section 106 Agreement would ensure that NHHT will abide by the AAAP, or that Southwark Council will take any steps to enforce NHHT's failure to do so.
137. Notwithstanding the Council's concessions in relation to the wording of the Section 106 agreement, there is significant doubt that the development will proceed in line with the AAAP. The CPO forms part of a defective scheme that is not made in accordance with the development plan. It represents the first phase of a larger project, and since the project is defective the CPO ought not to be approved. The integrity of the estate and its community will be sufficiently compromised to engage the 'well-being' criteria in section 226.

#### Response by the Council

138. The DPA included a definition of affordable rent because at the time at which it was signed it was intended that the extra care accommodation for elderly people and supported housing for people with learning disabilities would be provided at affordable rents. Following the April 2015 planning committee meeting it was agreed that these homes would be produced at social rents rather than affordable rents. These 27 units will be secured by the s106 Agreement. The letter from Deloitte clarifies that in respect of the Scheme "social rent means target rent".
139. The Development Partnership Agreement confirms the provision of 50% affordable housing of which 75% is to be at Target Rents.<sup>105</sup> The scheme will provide 304 social rented units at Target Rents in accordance with the obligation in the DPA.
140. At the planning committee on 23 April, the 35% Campaign Group was content to accept that policy compliant affordable housing would be provided if the

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<sup>102</sup> S106 Agreement p 29

<sup>103</sup> Inquiry Doc 30 p3 Table 1

<sup>104</sup> Council's Update Statement – para 4.4

<sup>105</sup> CD4 Schedule 3 page 357

resolution required the incorporation of reference to specific guidance within the section 106. The resolution reflected that agreement as does the section 106.<sup>106</sup>

141. The Acquiring Authority agreed to enter into a deed of clarification to make the suggested amendments<sup>107</sup>. The definition of social housing used relies on the application of national guidance within Appendix 1 of the Homes and Community Agency Rent Standard Guidance and is contained within the section 106 at Schedule 4. That makes detailed provision for the calculation of the rent which can be charged, based on a national formula set out in that document.
142. In addition, schedule 3 of the DPA sets out minimum requirements including the delivery and tenure mix of 50% of affordable residential units and 50% private residential units (calculated by habitable rooms) over the development area. Of the affordable residential units 75% must be target rent units.
143. The NHHT did provide details of prospective rent levels in the form of a table.<sup>108</sup> The table includes the information asked for, namely what rents have been included by NHHT in its bid for funding in March 2014. This was before the DPA was agreed and long before the planning application had been submitted.
144. In the case of Bermondsey Spa, the Acquiring Authority's investigations indicated that there was a difference between what the Council had originally sought to achieve on the site and what in fact has been delivered. The Council investigated this matter further during the adjournment, and took advice about the correct interpretation of the section 186 planning obligation. As a result of that process, the Council as local planning authority has decided not to take any further action.

#### Net Loss of Social Housing

145. Policy 3.14 of the London Plan states that the loss of social housing should be resisted unless it is replaced at existing or higher densities with at least equivalent floorspace. The planning applications underlying the Order would result in the net loss of at least 1,393 social rented homes.<sup>109</sup> If the Objectors concerns about the precise tenure mix are well-founded the net loss could amount to 2,700 and social rented homes and paragraph 3.3.1 of the AAAP which envisages a net loss of just 115 social rented units across the Action Area Core. Furthermore policy BH3 of the AAAP states that 50% of all new homes should be affordable and that of the affordable housing provided 75% should be social rented.

#### Council's response

146. Although the numbers at OCD8 are based on the planning application, they are incorrect and have subsequently been corrected.<sup>110</sup>
147. London Plan policy 3.14 and AAAP policy BH3 (tenure mix) para 3.3.1 refer to a loss of affordable, not specifically social rented, units. Accordingly, the

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<sup>106</sup> Inquiry Doc 16 resolution 6

<sup>107</sup> Inquiry Doc 62

<sup>108</sup> Objectors Update Statement Tab 9

<sup>109</sup> OCD 8 Aylesbury Estate Housing Tenure Table

<sup>110</sup> AA Objection Statement App3

Objectors' reference to social housing is a mis-reading of policy 3.14. This policy, read together with policy 3.9, represents a policy for the creation of more mixed communities while safeguarding floorspace in affordable housing. The Mayor's Housing SPG sets guidance on implementing policy 3.14 in relation to estate renewal.<sup>111</sup> Calculations of whether there is a loss of affordable housing or overall housing provision can be made on the basis of habitable rooms.

148. On the Order Land 830 units are proposed of which 406 will be affordable which represents a loss of 105 affordable dwellings. However, when calculated on the basis of habitable rooms there would be a loss of 3 habitable rooms.<sup>112</sup> On the estate as a whole the redevelopment is expected to deliver 3,983 new homes of which 2,012 will be affordable. This is a gain of 457 affordable habitable rooms. The DPA provides as a minimum requirement that the development as a whole should be 50% affordable housing, of which 75% should be at target rents.<sup>113</sup> The proposals are broadly consistent with this requirement.<sup>114</sup>

### ***Deliverability***

*The FDS scheme is not viable, nor is it deliverable. There are significant impediments to it proceeding.*

149. The Council states that funding for the redevelopment of the Order Land is in place.<sup>115</sup> However, the GLA position in relation to the funding for new homes on the Order Land is that no such funds will be allocated to the scheme. The GLA confirms that there is no signed funding agreement between the GLA and NHHT for the redevelopment of the Aylesbury scheme.<sup>116</sup>

150. Paragraph 88 of the GLA funding prospectus, states that the GLA will not consider grant funding for schemes where rents, either for affordable rent (which includes social rent) or shared ownership have been artificially capped through the planning permission or associated documents.<sup>117</sup> The s106 and associated documents would artificially cap the rents and thereby exclude GLA funding. This would have implications for the viability of the scheme and would be a significant impediment to its delivery.

151. It was accepted in evidence at the inquiry that the developer has not secured funding for social rent units. If the provision of affordable rent units in the future phases of the scheme is held to be unlawful (through incompatibility with the AAAP) then the whole scheme may become undeliverable.

152. The Conservative government manifesto pledges to extend the right to buy to housing association tenants (now to be implemented as government policy). This policy removes the certainty of future rental incomes.<sup>118</sup>

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<sup>111</sup> CD37 Mayor's Housing Supplementary Planning Guidance

<sup>112</sup> Inquiry Doc 17

<sup>113</sup> CD4 page 357

<sup>114</sup> Alison Squires POE para 5.14-5.15 & Neil Kirby POE para 3.17

<sup>115</sup> CD28 AA Statement Of Case para 8.8

<sup>116</sup> Objectors' Update Statement Tab 23

<sup>117</sup> Objectors' Update Statement Tab 24

<sup>118</sup> Objectors' Update Statement Tab 20

153. In July 2015 the government announced a policy in the Chancellor's summer budget, which will cut social rents by 1% annually for the next four years. An article in the Financial Times states that the effect of the cut will be to 'lop 7 per cent from housing associations' annual turnover, depressing operating margins and eroding cash reserves'.<sup>119</sup> This announcement throws doubt on the future viability of the scheme.
154. The assertion made on behalf of the Acquiring Authority that NHHT has already secured funding for the FDS, does not allay any of the deliverability concerns. NHHT's 'record surplus' must be considered in the context of its 2014/2015 Financial Statements, which states that Standard and Poor have revised its outlook on NHHT to negative. It also confirms borrowing of £1.2 billion, of which £466 million must be repaid in 10-20 years.<sup>120</sup>
155. It has been the Council's case that vacant possession of Ellison House will be required in order that the redevelopment of the Order Land can proceed. Correspondence submitted with the Council's updated Statement of Case confirms that the deliverability of Ellison House is now in doubt.<sup>121</sup>
156. The Secretary of State explains that the Ministry of Justice cannot vacate Ellison House until a replacement facility is built and available for immediate use.<sup>122</sup> There is no planning permission to develop any alternative site as a Probation Offenders' Reintegration Facility and it is anticipated that any such application may meet with objection from occupants from neighbouring properties. There is no contingency in the still partially redacted DPA for the inability to deliver Ellison House. It will also no doubt affect the viability of the scheme which will need to be amended to accommodate the re-provision of Ellison House. The inability to deliver Ellison House demonstrates that the FDS is not deliverable at all and amounts to a substantial impediment to the deliverability of the project.
157. The Council submits that it is sufficient for an Acquiring Authority to show 'general indication of funding intentions'.<sup>123</sup> However, the Aylesbury regeneration scheme represents London's largest council estate redevelopment scheme. The AAAP identified a funding gap of £82.63 million,<sup>124</sup> the HCA withdrew £180 million of Government funding,<sup>125</sup> the GLA funding allocation is not available and Ellison House, a key part of the FDS cannot be secured until at least 2018.
158. It is submitted that the CPO for the FDS should not proceed in circumstances where the viability of the whole scheme is uncertain. If the individual phases are not capable of being delivered, the scheme as a whole will fail to accord with the AAAP and approval of the CPO will run contrary to the guidance in the Circular. The regeneration scheme will take 15 years.

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<sup>119</sup> Objectors' Update Statement Tab 12

<sup>120</sup> AA Rebuttal Statement App RS1 2014-15 Financial Statement p20-21

<sup>121</sup> US8 and US9

<sup>122</sup> US9

<sup>123</sup> AA Rebuttal Statement para 2.4

<sup>124</sup> CD2 Table A7.2 p168

<sup>125</sup> OCD4 p1

Council's Response

159. Additional funding schemes are not required to deliver the Scheme, however £59 million grant funding from the GLA has been allocated to the scheme and this will be used towards the capital cost.<sup>126</sup> The GLA's funding mechanisms are relatively complex and while on the face of it funding is not available for target rents there is an exception for estate regeneration. For that reason the GLA allows its grant funding to be applied for the provision of target rent homes.
160. The Scheme for the proposed development on the Order Land is not subject to viability testing and a fixed price is to be paid for the land. Future phases are subject to viability testing but, given the length of the project, it is not possible to determine now what the variables will be at the time that testing is carried out. The DPA includes provisions for NHHT to make a fixed price payment for the FDS, payable in instalments as the Order Lands are developed. The Council will have overall responsibility for land assembly and the delivery of vacant possession of the development sites throughout the agreement. On the FDS this also includes the obligation on the Council to bear the cost of the demolition of the existing blocks to top of slab level.
161. The evidence of Neil Kirby addresses the contents of the DPA. The Council has already made provision in its current 5 year housing investment programme of £76.7m. This means that the Council has sufficient funds for site assembly on Phase 1 (including the FDS) and Phase 2. This includes demolition costs for Phases 1 and 2 of £9.2m and £13m respectively.
162. The DPA makes clear that the 50% affordable housing requirement is a minimum requirement and this will not be compromised through viability testing.<sup>127</sup> The details of the financial modelling have been kept confidential due to the commercial interests of both the Council and NHHT, as to reveal this information would be detrimental to those commercial interests in the market place for similar schemes in the future. It is considered that there is enough detail in the DPA in its redacted form and the redacted version of the viability appraisal to show how the Scheme is to proceed.
163. Paragraph 16(iii) of Appendix A to the Circular states that "*... a general indication of funding intentions, and of any commitments from third parties will usually satisfy the Secretary of State that there is a reasonable prospect that the scheme will proceed*". The Council believes that its evidence goes beyond this. The evidence of Rosemary Houseman sets out in section 6 the financial commitment NHHT has made to the project, and the evidence of Neil Kirby sets out in section 3 the Council's commitments. NHHT has a contractual commitment to deliver the Scheme. It has undertaken detailed financial viability testing of the Scheme in advance of the submission of the detailed planning application and quite apart from the contractual commitment NHHT is satisfied that the scheme is viable and will be delivered.
164. Negotiations in relation to Ellison House are on-going and the Council is satisfied that it is unlikely to constitute an impediment to delivery.

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<sup>126</sup> Rosemary Houseman POE para 5.6

<sup>127</sup> US2 Schedule 3 p82

*There is No Binding Agreement For the Development Partner To Implement the Scheme Underlying the Order*

165. The DPA is entirely dependent on viability conditions allowing the development partner to terminate without penalty should viability issues arise.
166. The DPA contains a break clause which enables either party to terminate the agreement if a plot is found not to be viable.<sup>128</sup> This clause does not relate to the FDS, but would enable withdrawal from the remaining phases.<sup>129</sup> There is no clause in the DPA which imposes a penalty on NHHT for defaulting on the agreement to develop the FDS. Under the section "Default", it says that NHHT would have to pay the Council *"the total amount of development costs incurred by or on behalf of the Council in carrying out and completing the development works on any plot where the developer has commenced development works"* if NHHT were to default on the agreement.<sup>130</sup> Given that NHHT has not commenced any "development works" on the FDS, it seems that at this stage it would be able to terminate without penalty.

*Council's Response*

167. The risk log sets out the risks of proceeding with the development partner.<sup>131</sup> In the DPA it was agreed that the delivery of the Scheme would not be contingent upon any viability testing. The risk highlighted in the risk log is of NHHT not proceeding with development of the FDS (the subject of this Order).
168. The mitigation described sets out the contractual commitment in the DPA to pay a fixed price and overage. It points out that if NHHT did not proceed the Council would have an implementable planning consent for the Order Lands and could consider procuring an alternative developer. The risk was specifically expressed to be set against a background of a decline in market conditions and increasing costs. On subsequent sites there are provisions to enable the parties to take steps to make the development viable.<sup>132</sup>

***Refurbishment is a viable alternative especially given previous expenditure and ongoing expenditure on estate***

169. The decision taken in September 2005 by Southwark Council to demolish the Aylesbury Estate is unsound for environmental and economic reasons. There is evidence that the Council made its decision to demolish without consulting any professional reports.<sup>133</sup> The Council also acted contrary to the requirement set out at Section 100D of the Local Government Act 1972.
170. Moreover the reports required by the Committee prior to progressing the scheme do not appear to have been completed. These concerns in relation to the flawed nature of the 2005 decision do not appear to have been taken as an issue by the Inspector who determined the Wolverton Inquiry (Site 7). Neither is any

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<sup>128</sup> US2 para 4.8.6

<sup>129</sup> US2 p132 para 3.2

<sup>130</sup> US2 p57 para 13.1

<sup>131</sup> CD7 page 566-567

<sup>132</sup> Neil Kirby POE paragraph 3.17

<sup>133</sup> CD8 p.14 'Background Papers: None'

reference made to this issue in the Inspector's report in relation to the inquiry at which the AAAP was examined.

171. Paragraph 16 (iv) of Appendix A to Circular 06/2004, states that the Secretary of State is required to consider "*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 re-use*". The Objectors maintain that refurbishment remains a viable and deliverable alternative.
172. In *Eckersley v Secretary of State for the Environment and Another (1977) 34 P. & C.R. 124* the Court of Appeal held that a question of cost was one of the factors relevant to a decision under Part III of the Act of 1957, as to whether demolition and rebuilding, or repair and reconditioning, was the most satisfactory method of dealing with the conditions in the area. A similar approach should have been adopted in the case of the Aylesbury Estate.
173. Whilst the Executive Committee was given information in relation to some of the commissioned research, no detail was provided as to how the figures presented were arrived at. No reference was made, or information provided to the Executive, concerning the design options by Levitt Bernstein commissioned by Southwark for the SW corner which included 5 options for the refurbishment and/or demolition and rebuilding of the 5-6 storey blocks.
174. The Conisbee Report shows that structural problems exist only in respect of the 5 and 6 storey blocks and the refurbishment proposals referred to above produced viable and cost effective solutions for those blocks.<sup>134</sup> Only 124 out of the 566 dwellings on the Order Land are situated within 5 or 6 storey blocks. These problems could be addressed by the removal of the gas supplies and strengthening.<sup>135</sup> The newly legible page 10 of the Conisbee Report provides further evidence that the refurbishment options that were prepared in great detail between 2003 and early 2005 were financially viable. Of those residents consulted in relation to the refurbishment scheme 67% responded and of these 90% supported the proposals.<sup>136</sup>
175. The costs of refurbishment are reported in the table of figures (BPTW) from the 'Conisbee Report 2004'.<sup>137</sup> This is relevant because the financial comparison given in the table is based on design solutions provided in the report.<sup>138</sup> These comprised three refurbishment options, and two demolish/new build options for the 5 and 6 storey buildings in the SW corner. They are the only designed and costed example of a comparison of the refurbishment, as opposed to demolish/new build options for the whole of the Estate.
176. It is further submitted that the information given to the Executive Committee was misleading.<sup>139</sup> The Frost Report, taken at its highest, provided a figure of

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<sup>134</sup> Inquiry Doc 23

<sup>135</sup> Inquiry Doc 23 p2-3

<sup>136</sup> Judi Bos POE App 1

<sup>137</sup> CD25 'Conisbee Report 2004' (Vol. 2, section 11.2 of Stage E Report Nov 2004).

<sup>138</sup> Inquiry Doc 38

<sup>139</sup> CD8 p587



£350 million.<sup>140</sup> However the executive summary of the Levitt Bernstein Report proposes a scheme 'For an average cost of about £50,000 per unit (2,700 Units).<sup>141</sup> This equates to £135 million for the refurbishment. The Executive Committee were therefore provided with the highest possible estimate, with no indication that a very affordable and considerably lower estimate had been provided by a reputable firm of architects.

177. The 'Comparative Table of Reports'<sup>142</sup> submitted by the Council provides no figures from the p. 10 'Conisbee Report, and it is not possible to compare the sets of figures for the other 3 documents referred to because the categories are not the same. Even when the categories correspond the figures do not correlate, and there is no background supporting data to explain how the figures were arrived at.<sup>143</sup>

178. There are also discrepancies between the various reports. The BPTW Report cost for refurbishing the whole estate to Decent Homes Standard is £192 million and to Decent Homes Standard Plus £257 million. This compares to the Frost Report figures of £261 million for Decent Home Standard and £354 million for Decent Homes Standard Plus, and the Annex A figures of £93.3 million and £146 million.

179. The Council's reliance on the cash-flow report at Appendix C cannot reasonably be said to constitute sufficient evidence for comparing figures on redevelopment, in light of the substantial research, designs and cost figures on the refurbishment and redevelopment options.<sup>144</sup>

180. Section 3 of the Executive Committee meeting report sets out refurbishment costs, without reference to any professional report.<sup>145</sup> There are no costs shown for redevelopment in section 3, nor elsewhere in the report. Thus the Executive Committee was provided with inadequate information to make an informed decision on whether to demolish the estate.

181. It is not in the public interest to demolish these dwellings because the scheme would displace those it was intended to benefit, in order to provide a developer's profit.

*Failure to commission evidence in relation to demolition*

182. There is no evidence that Southwark Council commissioned or consulted equivalent professional research giving designs and costs for a 100% demolition and new build option. Furthermore, the Council could have referred to comparative regeneration projects, which involved refurbishment such as Islington's Six Acres Estate. This was constructed with the same Jespersion 12M large panel system as the Aylesbury Estate. In that case a 6 storey block was demolished for structural reasons but 4 and 12 storey blocks were refurbished and the new flats built for sale provided income to fund the refurbishment.<sup>146</sup>

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<sup>140</sup> Inquiry Doc 49

<sup>141</sup> Inquiry Doc 22

<sup>142</sup> US6

<sup>143</sup> Professor Jane Rendell Oct 2015

<sup>144</sup> CD8 p613A

<sup>145</sup> CD8 p585-587

<sup>146</sup> Professor Jane Rendell Oct 2015 p 3

The refurbishment was successful and a more cost effective alternative to demolition.

183. The lack of any case study analysis is relevant in that much of the dissatisfaction with the estate was generated by Southwark Council and the media in order to build a case for demolition.<sup>147</sup>

#### *The Position Today*

184. The decision to demolish is environmentally unsound, especially in the short term, as noted in Southwark Council's Sustainability Appraisal of AAAP which states that 'the comprehensive demolition option scores poorly in the short term'.<sup>148</sup>
185. Due to the embodied carbon costs of existing building structures, as well as other social reasons in terms of displacing communities, demolition is now seen to be a non-sustainable option. A February 2015 London Assembly Housing Committee report '*Knock It Down Or Do It Up?*' suggests that a refurbishment scheme will generate significantly more positive quantifiable benefits and significantly fewer dis-benefits than a new build/demolition scheme.<sup>149</sup> The report refers to the principles advocated by George Clarke, the independent adviser to the Government, tasked with exploring whether the demolition of council homes should be scaled back.<sup>150</sup>
186. In the absence of any updated evidence, the Council cannot reasonably assert that refurbishment does not remain a viable alternative. It is understood that the only properties that have been demolished to date on the Aylesbury Estate are the 5/6 storey properties, which were structurally unsound. The purpose for which the land is sought may be achieved by other means and refurbishment remains a viable and deliverable alternative.

#### *Council's Response*

187. The option to refurbish was considered but the Council decided in favour of demolition and redevelopment. The Council's decision of September 2005 sets out the reasons for this.<sup>151</sup> As set out in the AAAP, this decision was made on the basis of the structural condition of the estate buildings, the quality of the existing environment, and the costs of refurbishment needed to deliver sustained and visible improvement beyond basic standards.
188. The options appraisal referred to by the ALG is included in the 2004 report (*Briefing Report on Structural Robustness of 5 and 6 Storey Jespersen Blocks* by Alan Conisbee and Associates, BPTW partnership and Levitt Bernstein Architects).<sup>152</sup> The considerations and recommendations supporting these reports contributed to the Council's decision making process. Other considerations also fed into this process, which finally led to the Council's decision to redevelop the entire estate, as set out in the 2005 Executive Report.

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<sup>147</sup> Inquiry Doc 21 p3

<sup>148</sup> Objectors' Update Statement Tab 19 para 5.3.9

<sup>149</sup> Catherine Crawford, para 9

<sup>150</sup> Objectors' Update Statement Tab 18 p44

<sup>151</sup> CD8

<sup>152</sup> CD25

189. The Conisbee Report 2004 the spreadsheet by BPTW sets out costs for each of the 5 options. It is the only report that sets out a comparison of refurbishment costs against rebuild costs (to the 5 and 6 storey buildings only). Relative to each other, the figures show that the refurbishment options are less expensive than the rebuild options.<sup>153</sup> The full cost of refurbishment was refined between the date of the Conisbee Report 2004 (November 2004) and the figures included in the Executive Report September 2005. Applying those refinements increased the refurbishment costs by approximately 25% to reflect Decent Homes Plus (and the urban improvement works and planned preventative maintenance) and approximately a further 50% of those costs should be added to represent the "whole costs" for refurbishment. A summary table of the various costs set out in the documents has been prepared and is attached at US6.
190. The 2005 Executive Committee Report draws on the findings of specific research papers commissioned by the Council and sets out how these findings informed the recommendations set out in the report. The actual papers are not specifically referenced or attached because the content is summarised in the body of the report.<sup>154</sup>
191. In his report following the public inquiry into the CPO for Site 7 on the Aylesbury Estate the Inspector confirmed that the AAAP policy document is an adopted part of the Development Plan and sets out a strategy for the wholesale regeneration of the estate.<sup>155</sup> He also noted that the buildings on the estate were beyond economic repair and even if they were repaired and refurbished they would retain their appearance and they would remain in conflict with modern building standards.<sup>156</sup> He confirmed that the structural condition of the blocks was well documented and noted their environmental inadequacies. The Secretary of State's decision letter agreed with the Inspector's conclusions and the Secretary of State decided to confirm the CPO.<sup>157</sup>
192. Many of the matters raised by Cabinet members in respect of the 2005 executive Committee Report were addressed in the report regarding the rehousing of tenants and homeowners on the Aylesbury Estate (CD13).
193. The Eckersley Case concerned the interpretation and application of section 42(1) of the Housing Act 1957. It is not clear why Objectors seek to rely on the Eckersley case, which is markedly different to this one, in that this case concerns a planning CPO under s.226, where the detailed development framework for the area seeks the redevelopment of the Order Land and the remainder of the Estate.<sup>158</sup>
194. Dr Crawford accepted (in cross examination) that the evidence she would need in order to make a comparison of refurbishment and redevelopment was not available, would be expensive to produce and therefore she was unable to conclude whether refurbishment would be better than redevelopment.<sup>159</sup>

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<sup>153</sup> AA Update Statement para 3.8

<sup>154</sup> AA Rebuttal Statement para 3.2

<sup>155</sup> CD11 para 25

<sup>156</sup> CD11 para 26

<sup>157</sup> CD11 para 8

<sup>158</sup> Inquiry Doc 65 para 45

<sup>159</sup> AA Rebuttal para 3.7

Cost of Emptying and Demolishing Estate and Current Expenditure on the Estate

195. The Acquiring Authority is estimated to be spending a total of £150m emptying and demolishing the Aylesbury estate.<sup>160</sup> In contrast, the Council Executive Committee Report, upon which the redevelopment decision was taken, estimated that the Acquiring Authority's total land receipts from disposal of the Aylesbury estate will amount to just £3.38m.<sup>161</sup>
196. The Council is currently 'up-grading' homes in phase 4 to the Warm Dry & Safe standard. These works will cost a total of £12,380,030 for a total of 611 homes.<sup>162</sup> This equates to £20,261 per dwelling for refurbishment in circumstances where those refurbished buildings will be demolished.

Council's Response

197. The reports referred to are from 2014 (demolition) and 2005 (land receipt). The figures are now out of date and are not relevant to the Scheme. Since 2005 the position has changed significantly and whilst it is not possible to state the amount the Council will receive in terms of land receipts (due to the phased nature of the development over many years, and the fact that overage is payable which will make up part of the receipt) the £3.38m figure is historic and in any case net of costs of demolition etc. Subsequent reports give more up to date land assembly costs based on the DPA obligations on the Council and current construction prices and values.<sup>163</sup> The Council's principal objective is to secure the redevelopment of the Aylesbury Estate for the reasons given above.
198. Of the total 2,759 dwellings on the Aylesbury Estate over a quarter are located within 5 and 6 storey concrete blocks. The refurbishment costs across the whole estate were reviewed subsequent to the 2004 Conisbee report and the whole cost was found to be more than the original assumed costs.<sup>164</sup>
199. There is an on-going maintenance, repair and replacement programme for all the dwellings on the estate, which is managed by the Acquiring Authority. All dwellings are kept to a basic dwelling standard, currently the 'Warm Dry Safe' programme. Some of the vacated properties have been put to use by the Acquiring Authority as temporary accommodation where viable to do so, but where not viable they have been secured.
200. There is a balance to be struck between maintaining the dwellings to a reasonable standard and carrying out major works of repair (for which leaseholders will be liable to pay through the terms of their leases). The Council is unable to locate any figures for the Decent Homes work carried out from 2005 as records do not go that far back, so it is unable to say how much has been spent on external works on the Decent Homes programme. Warm Dry Safe works have been carried out elsewhere on the Estate (not on the Order Land) at a total cost to date of £2,251,110.

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<sup>160</sup> OCD23, para 142

<sup>161</sup> CD8 page 613A

<sup>162</sup> Objectors' Update Statement Tab 10 & Inquiry Doc 11

<sup>163</sup> CD7 page 556-557 (January 2014 Cabinet report)

<sup>164</sup> AA Rebuttal Statement para 3.4

201. The Sustainability Appraisal found the AAAP policies to overall have a positive impact on sustainability, particularly in the long term. The extracted comment from the ALG needs to be considered within the context of the entire Sustainability Appraisal. Furthermore, the Sustainability Appraisal was considered by the Inspector in examining the AAAP, and the AAAP was found sound.<sup>165</sup>

### ***The Scheme Will Not Improve Well-Being***

#### *No consideration of social cost of breaking up community*

202. The proposed scheme would cause animosity between new residents in the new belt and the old residents waiting to be decanted that are being forced out of their homes. This goes against the AAAP vision and objectives to create a place with a strong sense of community.<sup>166</sup> In fact it would destroy the sense of community that is already there.

#### *Stock Transfer Ballot*

203. In 2001, the entire Aylesbury estate was balloted and residents were allowed to vote on the future of their homes. There was a 73% turnout and the vast majority of residents (73%) voted against the demolition and redevelopment of their estate by a Housing Association.<sup>167</sup> As a result, the Acquiring Authority subsequently adopted a programme of refurbishment in which the district heating system was upgraded and a significant part of the estate was brought up to Decent Homes Standard with double glazing. The 2005 Executive Report noted that one of the reasons for residents' overwhelming rejection of its redevelopment plans was that "*some residents .... Did not believe the new community based housing association would be able to keep its commitments on rents and service charges*".<sup>168</sup>

204. Without any further ballot or consultation, the Acquiring Authority changed its plans in September 2005 and decided instead to pursue a programme of demolition and redevelopment. This is a breach of section 105 of the Housing Act 1985, which requires landlord authorities to consult residents who are "*likely to be substantially affected by a matter of housing management ... and the authority shall, before making any decision on the matter, consider any representations made to it*".

#### *Council's Response*

205. The ballot referred to by the Objectors concerned the transfer of ownership of existing properties, not to demolition and regeneration. No existing council tenants will be transferred to housing association/registered provider tenancies. The rent and service charge concerns were raised in connection with a possible stock transfer. There has been extensive consultation on the proposals both during the developer partner selection process and the AAAP process. These allowed for full consultation on redevelopment proposals.<sup>169</sup>

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<sup>165</sup> AA Rebuttal para 11.3

<sup>166</sup> CD2 p19-20

<sup>167</sup> CD8 paras 2.3-2.4

<sup>168</sup> CD8 para 6.1

<sup>169</sup> Alison Squires POE para 4.83-4.89 & Legal Note paras 47 -56

### Perception of Estate

206. The label 'sink estate' was used increasingly to refer to the Aylesbury Estate and similarly stigmatised estates and their residents from the late 1990s. This has caused paralysis about how to remedy the problems which have been ascribed to them. Such estates have also been misrepresented as 'crime ridden' environments. Until recently, most of the available crime data was broken down by borough, and the Aylesbury Estate overlapped different administrative wards with varying levels of recorded crime and anti-social behaviour. However, since 1999, the Aylesbury Estate New Deal for Communities produced crime statistics for the estate (2000–2005) and compared these with the borough average. These show that crime rates were consistently lower on the estate than for the borough as a whole.
207. Southwark Council has capitalised on estates as gritty film locations. The Aylesbury and Heygate Estates have been used by numerous film, TV and music production companies. Often, the sense of degradation has been enhanced, as in 2007, when a company filming an advertisement for a special edition Fiat 500 Viral 'Street Art' car added graffiti and murals to the walls of the slab-blocks in post-production.
208. Conditions on this estate may have fallen short of the political and architectural ideals that drove the original design, however instead of providing remedies, successive governments and policy changes have hindered rather than helped the situation. A new approach should be developed which favours an ethical, community-led and incremental regeneration approach, with the Aylesbury Estate being celebrated as an exemplar of positive housing refurbishment.

### Council's Response

209. The Council has not inferred that crime rates are particularly high. Nevertheless, as Jacqueline Fearon's proof explains, there have been incidents of crime and anti-social behaviour and the current design of the Estate can serve to facilitate this behaviour.<sup>170</sup>

### Mixed Communities Policy

210. Mixed Communities Policy leads to gentrification and displacement and this is not in the public interest of either Aylesbury Estate tenants nor of London more generally.
211. Following Tony Blair's visit to the Aylesbury Estate in 1997 the estate was given NDC status. Studies began on how the estate could be regenerated. The NDC was given £56.2m over 10 years in order to lever a further £400m as part of its proposed stock transfer from the Council to housing association tenure.
212. Although there was undoubtedly tenant dissatisfaction with the appearance of the estate, its maintenance, cleanliness, lighting, security and crime, most of the tenants interviewed in a MORI poll at the time were satisfied with their

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<sup>170</sup> Jacqueline Fearon POE paras 6.2,6.11,6.12,7.1

accommodation and with the estate as a place to live.<sup>171</sup> Southwark Council were forced to retain ownership of the Aylesbury Estate and rethink.

213. Mixed communities policy has long underpinned the regeneration of the Aylesbury Estate. The irony is that, as the Aylesbury Tenants and Leaseholder's First show, the estate is already very socially mixed.<sup>172</sup>
214. Gentrification induced displacement can be direct or indirect. Displacement is not only the removal of low-income households by eviction or compulsory purchase, but also the fact that indigenous residents might not feel at home anymore in the changed neighbourhood because of the general decline of working class culture and identity.<sup>173</sup> The submitted maps provide evidence that the displacement of council tenants and leaseholders from the Aylesbury Estate is already a real issue, and this is before the larger redevelopments have even taken place.<sup>174</sup>
215. There is no evidence that redevelopment would lead to reinvestment in the area. Refurbishment would deliver similar employment benefits. There would be the loss of 0.39 hectares of open space and increased densities. The delay in implementing the scheme has led to blight.

#### Council's Response

216. See Council's Case above.(paragraphs 71,72,73)

#### ***The Acquiring Authority Has Failed in its Obligation to Acquire the Objectors' Homes By Agreement***

217. Acquiring Authorities are required to seek to acquire land by agreement wherever possible. CPO powers should only be used as a last resort. The Executive Committee meeting in 2005 agreed that the compensation offered to leaseholders would be the existing market value based on the average of two independent valuations.
218. The Council has gone back on this commitment by only having its own in house surveyor do a single valuation. This creates a conflict of interest. The CPO could be avoided if the leaseholders were allowed independent valuations. The Council's valuations were carried out by Mr Warner who was not RICS qualified and relied on on-estate comparables rather than market values.
219. The Council has adopted extremely low valuations. The average offer to ALG is £187,000 whilst a flat on the nearby Camberwell Fields development is £459,000. It stated that 3 bed properties were worth £140,000 to £155,000 in September 2013.<sup>175</sup> However in May 2013 3 bedroom properties were selling for more than that at auction. The Council's current valuation for a 3 bed property is £220,000.
220. Part of the reason for this is that the Council did not set aside enough money within the capital programme to buy the leaseholders out at full market value.

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<sup>171</sup> Inquiry Doc 21 Loretta Lees POE page 3

<sup>172</sup> Inquiry Doc 21 Loretta Lees POE page 3

<sup>173</sup> Inquiry Doc 21 Loretta Lees POE page 5

<sup>174</sup> Inquiry Doc 21 Loretta Lees POE page 6

<sup>175</sup> Judi Bos POE Attachment 6

The £11.923 million budget to acquire 85 properties within Phase One would only allow an average value paid to each leaseholder of about £140,000.<sup>176</sup> The last sale on the estate of the two bedroom property was more than that prior to the budget decision. The last three bedroom open market sale on the estate was already £160,000. The Council currently has £8.2 million left to buy the last 28 properties on the Order Land. This would average £292,000 per property. When home loss payments, disturbance costs, solicitor's costs and the costs of purchasing another property are taken into account the market value that the Council would be able to pay is less than £250,000 per property.

221. The Objectors propose that, should the CPO be confirmed, the Order be modified to confirm that the Acquiring Authority should adhere to its original promise of determining market value according to the average of two independent valuations.

### Council's Response

222. The Acquiring Authority has made the CPO as a last resort since its attempts to acquire the properties by agreement have not succeeded in the case of some of the homes, although the majority have already been acquired by agreement and some matters are currently in solicitors' hands. The evidence of Mark Maginn (sections 4 & 5) sets out the steps that the Council has taken to try to obtain possession by agreement.

223. The Acquiring Authority considers that its most recent round of offers (made following two Lands Tribunal decisions in the cases of John and Joshua<sup>177</sup>) reflect the open market value of the leasehold interests. The Acquiring Authority will also make payments in relation to disturbance costs, reasonable fees and occupier's loss. All valuations were checked by an independent surveyor.<sup>178</sup>

### Rehousing/financial scrutiny

224. The evidence given by leaseholders demonstrates that Southwark's policies for rehousing do not work in practice due to high housing prices. This will result in leaseholders being displaced from the area,<sup>179</sup> which is clearly not in the public interest, and will not improve the well-being of the area.

225. The 'like for like' policy for re-housing of leaseholders has been abandoned by the Acquiring Authority because of the increase in housing prices in this part of London. This limits the opportunity to mitigate the effects of the CPO on the leaseholders.

226. The leaseholders are placed under significantly greater financial scrutiny than tenants. Such scrutiny entails an intrusive financial assessment which is not required of tenants. Each household is permitted to retain only £16,000 of capital. This requirement has significant implications for leaseholders' future financial security and future plans.

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<sup>176</sup> CD10 para & App 2

<sup>177</sup> AA Objection Statement App 2

<sup>178</sup> CD16 p916-917 & Inquiry Doc 20

<sup>179</sup> Inquiry Doc 21 Loretta Lees POE figure 1



### Council's Response

227. The option to return for leaseholders is not an offer that the Council has made on any of its large regeneration schemes in the past. It has been consistent with that policy in respect of the Aylesbury Estate. Option to return offers have been made on other regeneration schemes (Wooddene, Elmington) but only in respect of tenants, not leaseholders. Policy dictates that resident home owners should be prioritised for Low Cost Home Ownership Schemes in the newly developed units, but that this will be dependent on what is available at the time. Leaseholders from the Order Land were given an opportunity to view properties on the first site to be developed, Site 1a, and to apply for Low Cost Home Ownership schemes, but decided not to pursue these.

228. In summary there are three main options for leaseholders, depending on their circumstances. These are purchasing a replacement property on the open market, purchasing a replacement property through a low cost home ownership scheme (shared ownership or shared equity) with a housing association or seeking re-housing assistance from the Council and eventually becoming a full/shared owner or tenant of a Council property. Live-phase regeneration home owners are invited to make a re-housing assistance application to the Council's Home Ownership Service. The scheme is conditional on full disclosure by applicants of their financial circumstances.

229. The Council has provided all leaseholders on the Order Lands with a booklet explaining and setting out the detailed rehousing process, and options available, to all resident leaseholders.<sup>180</sup> Several leaseholders have already moved from the Order Lands under the process set out in the Leaseholder Guide. In addition, the Council has been in regular contact with all resident leaseholders to explain the process in more detail and support them in the options that are available to them. All leaseholders will be means tested to assess their ability to afford the different types of rehousing options available. This is done on an individual basis and is dependent on a leaseholder's personal financial situation.

230. The Council keeps detailed records of contact made with leaseholders and can demonstrate that it has made every effort to engage with each of them and has fully encouraged them to make rehousing assistance applications. This assistance includes staffing a leaseholder drop-in service two days per week at the local housing office, as well as letter and information drops to the properties themselves.

231. The purpose of the financial assessment is to determine which category of assistance a home owner may qualify for. The assessment determines whether they can afford to remain in home ownership either privately or remain in home ownership as a shared or full-owner with the Council as landlord, or whether a reversion to a Council tenancy is appropriate.

### ***The Acquiring Authority Failed to Carry Out an Equalities Impact Assessment in Relation to the Leaseholders***

232. Many of the Leaseholders hold protected characteristics and are all more vulnerable than tenants on the estate since they are deprived of the right to

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<sup>180</sup> CD16

return to the estate. The Acquiring Authority did not undertake an Equalities Impact Assessment addressed expressly to the leaseholders and thereby failed to comply with the Public Sector Equality Duty set out in section 149 of the Equality Act 2010.<sup>181</sup> There about 200 resident leaseholders across the estate and there were about 40-50 in the Order Land. They form a separate group who are more adversely affected than any other group. Their members predominantly comprise Black & Minority Ethnic (BME) individuals and families which constitute a protected group.<sup>182</sup>

233. No separate assessment was made as to the ethnic constitution of the tenants as opposed to the leaseholders, nor whether the Aylesbury leaseholders would fare worse than homeowners on other estates who did not share the same protected characteristics. Depriving a BME homeowner of his/her home requires an assessment of whether that homeowner would be more adversely affected than one from a non-predominantly BME estate. Leaseholders from the BME community on the Estate derive cultural advantages from living in the area.<sup>183</sup> They face forced separation from their communities, which in many cases may result in difficulty in retaining contact with a particular culture.<sup>184</sup>

234. The Council states that the January 2009 Equalities Impact Assessment considered the impact of the CPO on leaseholders through recommending the introduction of a package of measures including compensation and rehousing opportunities.<sup>185</sup> This assessment did not enquire into the protected characteristics of the leaseholders and did not comply with the Section 149 requirement.

#### *Council's response*

235. An Equalities Impact Assessment was carried out as part of the process for the AAAP and this has been kept under review.<sup>186</sup> While this did not assess all of the groups with protected characteristics identified under the 2010 Equalities Act, the outcomes of that assessment are still valid and demonstrate that the impact from the redevelopment on local people will be overwhelmingly positive. In taking the decision to phase the redevelopment the Council is seeking to maintain as much as possible the existing community and the social networks that exist within it. The Council's Planning Committee reports for the scheme and the outline planning application also address the equalities impact.<sup>187</sup>

236. Furthermore, Council-assisted re-housing enables those home owners that apply, engage and qualify to choose where in the borough they would like to live. One home-owner from Site 7 moved less than half a mile away from their Aylesbury home through the Council's choice based lettings scheme, enabling them to maintain their links to healthcare services and their church. Three leaseholders from Site 7 have also moved to Site 1a or to other properties nearby.

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<sup>181</sup> AA Rebuttal Statement para 4.1

<sup>182</sup> Objectors' Update Statement Tab 2

<sup>183</sup> Objectors' Update Statement Tab 2

<sup>184</sup> Objectors' Update Statement Tab 2

<sup>185</sup> AA Rebuttal Statement paragraph 4.1

<sup>186</sup> AA Rebuttal Statement App RS3

<sup>187</sup> Council's Objection Statement App1 para 383-403

237. In *R. (On the application of Baker) v. Secretary of State for Communities and Local Government* it was held that the duty to “have due regard” required the Inspector to have due regard to the need to promote such equality of opportunity. She had to take that need into account, and in decide how much weight to accord to that need. It is the regard that is appropriate in all the circumstances, and there is not a duty to promote equality of opportunity between the appellants and persons who were members of different racial groups.<sup>188</sup>

### **Human Rights**

238. The Acquiring Authority has failed to comply with paragraph 17 of Circular 06/2004 in terms of human rights and does not address Articles 1 and 8. The CPO engages the rights of the Objectors under European Convention on Human Rights (ECHR) in respect of Articles 1 (right to quiet enjoyment of property) and 8 (right to respect for private and family life). For the reasons advanced by the Objectors, the breaches of the rights that will ensue from the demolition of their homes is not in accordance with the law and is disproportionate to the policy based aim advanced in support of the Order. This matter is illustrated by the evidence provided by Beverley Robinson.<sup>189</sup>

239. As the Leaseholders’ Article 1 and 8 rights have been breached, it is incumbent upon the Acquiring Authority to justify that breach in terms of proportionality. The sparse and generalised reasons provided in this case fall far below the test set out by Blake J in *The Queen on the Application of Edith Baker v First Secretary of State [2003] EWHC 2511 (Admin) at paragraph 45 of that judgment.*<sup>190</sup>

240. In *R (Clays Lane) v Housing Corporation* Maurice Kay J stated that ‘*the appropriate test of proportionality requires a balancing exercise and a decision which is justified on the basis of a compelling case in the public interest as being reasonably necessary but not obligatorily the least intrusive of Convention rights.*’<sup>191</sup>

241. Many of the leaseholders purchased their properties after the stock transfer ballot but before the decision to demolish the estate in 2005. A number of the leaseholders no longer have mortgages and many are no longer in employment. As a consequence of the CPO they will be separated from their family and friends and they will be unable to afford to return to the estate.

242. The logic in the Council’s position is flawed. If a leaseholder is entitled to purchase new NHHT leasehold properties nearby, or new properties on the estate itself, either on Site 1a or Site 7, with attendant conveyancing fees, stamp duty and removal – there is no fundamental difference to the right to return being permitted with the same expenditure provided by the Acquiring Authority or the developer. Such conduct is proportionate to the loss that ALG have suffered, including an expectation after the 2001 ballot that they were purchasing a home for life, so as to enable them to make other financial provision for their future.

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<sup>188</sup> Legal Note para 32

<sup>189</sup> Objectors’ Update Statement Tab 2

<sup>190</sup> ALG Closing Submissions para 114-116 & Inquiry Doc 53

<sup>191</sup> Inquiry Doc 61

243. It is submitted that the balancing exercise should be resolved in favour of the leaseholders. As previously stated, the denial of the right to return to leaseholders who purchased their homes after the estate had voted for refurbishment, cannot be justified on the mere ground that leaseholders have been prevented from returning to estates on other developments. The leaseholders suffer more detriment than any other group of individuals who will lose their homes as a consequence of the CPO.

### Council's Response

244. The Human Rights Act gives affected parties the right to a fair hearing (the public inquiry) and those parties affected by the compulsory purchase of their properties will be compensated financially. The redevelopment of the Order Land has cross-party political support and is a pan London priority for the GLA.<sup>192</sup> The Council therefore believes that it has carefully considered the balance to be struck between the effect of the acquisition on individual rights and the wider public interest in the redevelopment of the Order Land. Neil Kirby's evidence addresses this point.

245. The Council has had to consider whether the purpose for which the Order was made sufficiently justifies interfering with the human rights of objectors under the provisions of Article 8, and Article 1 of the first protocol of the Human Rights Act 1998.<sup>193</sup> It is acknowledged that the Objectors live on the Estate and do not want to move out of their homes, the Council does not believe that this is any longer a realistic prospect, given that the vast majority of the Order Land has now been vacated by agreement. The Council has in place a viable and funded scheme and confirmation of the Order will enable this to proceed, and to secure the public benefits which it is believed the scheme will bring. The Council has made the CPO as a last resort and believes that there is a compelling case in the public interest for confirmation of the Order. The Order, if confirmed, would be necessary, proportionate and would strike an appropriate balance between public and private interests.

### **Condition of Properties**

246. Properties acquired by the Acquiring Authority have been secured but left in a derelict manner which causes blight and adds to the justification for a CPO. Remaining residents have encountered a number of problems with the maintenance and environment of the Order Land. These include lack of maintenance and cleaning to the communal areas.<sup>194</sup> This has given rise to an injury in relation to Mr Sangbey's young son.<sup>195</sup> Due to the security fencing and high level of vacancy the flats present a forbidding environment which deters visitors.

247. In addition Royal Mail are reluctant to deliver, residents have had difficulties ordering goods for delivery since the addresses no longer appear on the address database. In addition there is a risk to credit checks.

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<sup>192</sup> AA Statement of Case para 4.3

<sup>193</sup> Neil Kirby POE para 7

<sup>194</sup> Objectors' Update Statement Tab 2

<sup>195</sup> Inquiry Doc 3 & Objectors' Update Statement Tab 5

### Council's Response

248. The Council has received complaints in respect of a number of issues on the Order Land including post not been delivered, concerns from Royal Mail over the perceived safety of their staff, cleaning and grounds maintenance, residents having difficulty in obtaining access for credit checks, using their addresses within the Order Land, and residents experiencing difficulty at the secure entrance to the Order Land, because the security guards are allegedly not in attendance 24/7.
249. Efforts are being made to address these concerns with one-off cleaning and grounds maintenance as necessary, in addition to regular cleaning and maintenance cycles. Liaison with Royal Mail is on-going and external post boxes adjacent to the secure entrance are being provided to address difficulties with postal deliveries.<sup>196</sup>

### **Acquiring Authority's Actions Are Not in Accordance With the Law**

250. Much of the conduct of the Acquiring Authority has been 'not in accordance with the law.' In particular this includes the failure to comply with Section 149 Equalities Act 2010 in relation to the leaseholders, failure to hold a ballot as required by Schedule 3A Housing Act 1985, where a tenancy is proposed to be transferred from a local authority to a private landlord, the failure to comply with the rehousing duty under S39 Land Compensation Act 1973 and the lack of progress and intransigence in the approach by the Council Valuers on the issues of compensation. This is illustrated by the updated witness evidence of Beverley Robinson, including the statement of Alan Shaw in relation to the unreasonable interpretation of *Joshua v Southwark* (paragraph 28) and that of Judi Bos.

### **Conclusion**

251. The scheme will not promote the social well-being of the area. The leaseholders do not have any right to return and a relatively long established community will be dispersed in favour of private owners.
252. Paragraph 6 of Appendix A of Circular 6/2004 states that the power to compulsory purchase must not be exercised unless there is the likely improvement of the well-being in the whole of the administrative area. There can be no such improvement where the scheme viewed as a whole is flawed. The AAAP relates to the whole scheme and the Acquiring Authority seeks to rely on the integrity of the AAAP to justify development of the Order Land. If the Masterplan is not deliverable through incompatibility with the AAAP, then the CPO is not properly founded and should not be approved.
253. The Order does not advance any compelling case in the public interest in circumstances where the development was endorsed by the local Council in the absence of any professional report which related to the cost of refurbishment. Refurbishment was shown by the authors of the Conisbee report to be a viable option for the reasons set out in the witness evidence of Jane Rendell. Further, the current costs of the demolition project are excessive and are not in the public interest.

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<sup>196</sup> AA Update Statement section 6

254. As at April 2015 the Council had spent a total of £46.8m on the scheme (including capital and revenue expenditure). 112 homes on the Aylesbury Estate have been demolished to date. It can be calculated therefore that an average of £417,857 per dwelling has been spent on demolition. Even including the circa 500 homes on the FDS, the figures show that the cost of demolition is circa £75k per dwelling. This does not represent a good use of public funds. Neither does the expenditure present a compelling case in the public interest. The on-going costs of the flawed scheme are disproportionate.
255. There is substantial uncertainty that the scheme can be delivered. Therefore the FDS and overall scheme do not constitute sustainable development within the meaning of NPPF paragraph 173. Neither does the CPO meet the requirement of Appendix A of the Circular since the financial viability of the scheme is uncertain.
256. The evidence demonstrates a net loss of affordable housing. Notting Hill Trust's February 2015 Affordable Housing statement confirms that 148 new affordable homes have been delivered in the early phases (541 Habitable rooms). Adding these 541 to the 1,395 affordable habitable rooms that Notting Hill must provide on the FDS and 4,790 on the outline development site (6,185 affordable habitable rooms in total) according to schedule 8 of the S106 agreement and subtracting the total (6,726 HR) from Notting Hill's baseline of 7,345, then we have a net loss on the scheme as a whole of 619 affordable habitable rooms. In the circumstances the CPO does not accord with Policy 3.14 of the London Plan.
257. It is clear from the evidence before the Inquiry, particularly that of Professor Rendell, that there is an appropriate alternative proposal, which has been present since the residents comprehensively rejected a stock transfer in 2001.
258. The situation pertaining at Ellison House amounts to a significant impediment to implementation. It demonstrates that the necessary resources are not deliverable within a reasonable timescale and, in general, that there is little prospect of properly implementing the scheme for a number of years.
259. The CPO falls foul of all of the criteria in Paragraph 16 of Appendix A of Circular 06/2004 in that :
- The purpose for which the land is being acquired does not fit in with the Area Action Plan.
  - The dispersal of the communities at Aylesbury Estate and the failure to protect social rents do not contribute to the well-being of the area.
  - The overall scheme (of which the FDS is an integral part) is not viable and the purpose for which the acquiring authority is proposing to acquire the land is better achieved through refurbishment.
260. The CPO does not meet the requirement under Section 226 TCPA 1990 and breaches the human rights of the leaseholders. It is respectfully submitted that the Order should not be confirmed.
261. Alternatively, the Inspector is requested to recommend:
- 1) That leaseholders are permitted to return to the estate in circumstances where they are compensated for decanting, and are left in no worse a financial position than prior to the making of the Order.

2) The social rented housing required by policy BH3 of the AAAP applies to the whole estate, and social rented accommodation is taken to denote social rent as determined by the National Rent Regime, and not as a percentage of market rent.

3) That the refurbishment option is reconsidered for the remaining phases in the development.

### *Council's Response*

262. In the Site 7 CPO Inspector's Report the Inspector stated that there was a more than compelling case for confirmation of the Order.<sup>197</sup> He stated that the planned development of the Order Lands would improve the economic, social and environmental well-being of residents in the borough, would be in accordance with the AAAP and with the development plan and would be in accordance with sustainability principles set out in the NPPF (paragraphs 28 &29). The current Order is based on a scheme which is similarly in line with the AAAP and development plan and offers similar, indeed enhanced benefits, including community facilities to be built on the Order Land and the additional community benefits secured through the DPA and the Business Plan.

### **The Case for the Statutory Objectors (Additional Matters Raised by Individual Witnesses)**

#### **Gillian Mutch Leaseholder (157 Bradenham)<sup>198</sup>**

263. I moved to the estate 20 years ago and enjoy the benefits of a larger light flat with amazing views across Central London, Camberwell and Peckham. I have also enjoyed living and working within a diverse community. The Aylesbury Estate provides easy access to museums and galleries within London.

264. I believed I was buying a flat with a secure future on what was to be a physically improved estate. Southwark Council's *Homeowners Rehousing Tool Kit* stated that leaseholders would be reimbursed at the market value for the property. The values currently being offered do not reflect that statement, nor do the continuous disagreements over fees between surveyors.

265. I was sold a property which was due for refurbishment and shortly afterwards was due for demolition. I have not been able to move to an equivalent property in the area because of high local prices and the low values offered by Southwark Council. My attempts to move away from this location have been thwarted by lack of negotiation and quibbling over fees.

#### **Julius Komola Sangbey Leaseholder (122 Chiltern, Portland Street)<sup>199</sup>**

266. I have resided in my flat since January 2000 and purchased it under the right to buy in 2005 hoping to have a home for life. Investing in property seemed to be the most effective and safest way to invest my capital and achieve good capital gains. I have invested considerable amounts of money in this property through contributions towards major works which have included decorations,

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<sup>197</sup> CD11 para 29

<sup>198</sup> Witness Statement

<sup>199</sup> Inquiry Doc 3 & Objectors Update Statement Tab 5

security doors and the heating systems. One would expect to see a proportionate increase in the value of the property reflecting this level of investment.

267. The Council has run down the block beyond economic repair in order to stop it appreciating in value in line with property prices in the area. This has created a negative equity for leaseholders' investments.
268. Due to my current employment situation and age it would be very difficult for me to secure a mortgage. The valuation received from the council surveyor is well below the market value and this leaves leaseholders in a very difficult position. In January 2015 following the Land Tribunal case the Council surveyor revised the Council's offer to £172,500. This represented an increase of 115% from its original offer in May 2012. This demonstrates this brings into disrepute the credibility of the Council's valuations.
269. Pledge 6 of the Charter of Principles For Estate Redevelopment, was adopted by the Council's Cabinet on the 18 November 2014. This states that any tenant or leaseholder wanting to stay in an area where redevelopment takes place will be offered the opportunity to do so.
270. My two children attend local schools and we are living in a one bedroom flat due to the rehousing options available to us. My children are unable to travel to and from school alone due to the manner in which the flats have been secured with perimeter fencing. They are also unable to invite friends back. Despite the continued demands for service charges the flats are not maintained. As a consequence my son had an accident due to a damaged tile.

**Jazmine Bos Leaseholder's Daughter<sup>200</sup>**

271. I am the daughter of Judi Bos the property owner of 143 Chartridge. Two years ago I wanted to move into the property with my children. When I came to see the property it was very different from when I lived there. The area felt very unsafe because most of the other flats had been boarded up and the poor lighting. The communal areas had been neglected, the grass and children's play area was not maintained and therefore not safe for my children to use. Due to the state of disrepair I decided that I could not compromise the safety of myself and children by moving into the property.

**Ms Sanyu Agnes Kabuto Leaseholder (148 Chartridge Westmoreland Road)<sup>201</sup>**

272. I have lived on the estate for 25 years and bought my property to give myself and my family a secure future. I am now to be deprived of it. We were promised that we could return to the footprint of the former Aylesbury Estate but we have now been told that this is not the case. I have enjoyed living on the estate and have made long-term friends and enjoyed the good community spirit. My granddaughter attended a local school until recently, but has now moved out due to the difficulties of living here and mixing with friends. My mother who is disabled can easily access the services she requires from my flat. The estate is in a good location and I am able to take my grandchildren to Burgess Park.

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<sup>200</sup> Witness Statement

<sup>201</sup> Witness Statement & Objectors Update Statement Tab 3



273. It is not in the public interest to take away the land from the community that have lived here and brought up families on the estate. What is the point of improving existing dwellings when they are going to be demolished? For example the Council replaced the water pipes in the current phase 1B and 1C which are due to be demolished. This cost the Council £32 million.
274. Regeneration is good for the area, but priority should be given to those that have lived in the area that is being regenerated. If a fair price was being paid for my dwelling I could afford to remain in the area. This scheme will separate the low earners and the high earners and has made me feel isolated, discriminated against, bullied and dehumanised.
275. The financial scrutiny has been intrusive and made me feel like a criminal. With shared ownership I would only have been able to buy a 15% or 20% share of a new property and the rest would have been rented. I am unable to get a mortgage due to my age. I will be deprived of my home and I would need to earn at least £60,000 in order to buy a property under the shared ownership scheme.
276. Under shared equity, whilst I would own a percentage of the property, in practice I would not be able to increase that proportion over time. The cost of service charges and other expenses would soon erode the £16,000 worth of savings that I would be allowed to retain. The money used to challenge the Objectors to this CPO would be better used to compensate the leaseholders.

**Leslie Kerrigan Leaseholder (175 Bradenham House) <sup>202</sup>**

277. I have lived on the estate for 27 years and been a leaseholder for 11 years. I am very happy living in my flat and would much rather it be refurbished than demolished. The cost of such works could take the form of a charge on the property and therefore would be affordable.
278. I have a lot of friends and family ties in the area, including my mother who lives nearby and is currently unwell. It is therefore absolutely crucial that I stay nearby. The Council has shown no signs of helping me stay in the area, either by paying me enough money to buy another property within the area or by rehousing me. Since the Council has improved security I love living in my flat and cannot imagine living elsewhere.

**Judi Bos Leaseholder (143 Chartridge) <sup>203</sup>**

279. The location of my flat across the road from Burgess Park was one of the reasons for buying my property. It was a pleasure to sit out on my balcony and look over the park. We used it for many family meals and it became another room to my flat when the weather was nice enough. Bringing up a family on the estate was great. There were many activities for young children in the vicinity and I made use of as many of them as I could. The children played with each other on the walkways or the grass to the front of the houses and were overlooked by their parents. I worked on a project called Young People's Project which gave advice to young people on the estate and help them become part of the community.

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<sup>202</sup> Witness Statement

<sup>203</sup> Witness Statement(April 2015), Inquiry Docs 42, 51 & 62. Objectors' Updated Statement Tab 4

280. The play areas allowed children to play together under the watchful eye of their parents. It allowed new residents to integrate and stopped them from feeling isolated. The walkways provided a safe place to play away from cars. Had the ramps been removed in accordance with the refurbishment scheme access to the block would have been restricted to residents and their guests and would have created an even safer environment. The estate roads would have been made into streets by converting the garages into new homes.
281. The green spaces and sports pitches on the estate were very well used by the local children to the extent that it was sometimes difficult to find a space for children in my project to play sport since these areas were often full.
282. The Council has never negotiated with me regarding the value of my property. The offer in January 2011 was £10,000 less than the property's value in 2005. In January 2015 the Council issued new offers. My surveyor wrote to the Council explaining that the offer was again too low and the Council responded that unless we accepted the offer we would have to go to tribunal.
283. The properties have been blighted for the past ten years. I am only able to get a reduced rent as opposed to the current market rent for my flat because the majority of my block is derelict. I have been unable to sell over the past few years. The refurbishment scheme included many of the aspects and changes to the physical environment now proposed by the Council.<sup>204</sup>
284. If the Council were to adopt the refurbishment option over the whole estate the CPO would not need to go ahead, nor would any future CPO on the estate. There would be reduced costs in rolling out the refurbishment option since some decanting has already taken place. In addition, major work for a replacement district heating system has already taken place reducing the cost further and making demolition even less viable. I have already had my wiring, kitchen and bathroom replaced as have many leaseholders.
285. The Michael Faraday School has been an excellent school as far back as I can remember and the Walworth School was already improving back in 2004. Therefore the AAAP cannot take credit for these schools. This scheme will have a negative impact on children decanted out to different areas. They will either have a long journey to school and may be more tired and therefore less able to achieve their full potential, or they will have their education disrupted by moving to a different school.
286. My daughter lives in temporary accommodation in an adjoining borough and has to travel for over an hour each way in order to take her children to school. This goes against the Human Rights Act as my family is being deprived of my possession and therefore not peacefully able to enjoy it.

**Beverley Robinson Leaseholder (105 Chiltern, Portland Street)<sup>205</sup>**

287. I have lived on the Aylesbury Estate for over 27 years. The community of the estate is largely made up of ethnic minorities and diverse groups. My immediate

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<sup>204</sup> CD25 Appendix 1

<sup>205</sup> Witness Statement (April 2015) Objectors' Update Statement Tab2 &

- support network has been broken up due to people being forced out of the area. Neighbours within my block used to help me when I had medical issues by getting my shopping, or picking up my prescriptions. These neighbours have been forced out of the area and other residents on the estate are fearful that their communities will be broken up in a similar manner.
288. My neighbours have moved as far afield as Woolwich and Northampton. I am concerned that the Council is not addressing its rehousing duty in a humane and effective manner. The information sought is intrusive and breaches my rights to a personal and family life. The Council's current policy would force me to redirect virtually all of my savings to property investment, thus depriving me of resources to meet my health needs and support myself in old age.
289. I have found the CPO process very traumatic. I now live surrounded by a fence and cannot always get into my flat. There are problems with living here at present in relation to the suspension of postal deliveries, difficulties purchasing goods that need to be delivered since my address has been removed from the relevant data base. It also involves a risk to job applications, credit checks, bank statements and communications to social security. These problems adversely affect the health and well-being of myself and other residents and leaseholders, and should the CPO go ahead will affect other residents on the estate.
290. I do not live on benefits, but derive my income from my savings. If I am required to invest my savings in a new property, I will not be able to return to education as I planned to. I would need to move away from my family and friends. I have also spent a lot of money on the interior of my flat, since I understood that the outside would be refurbished by the Council.
291. My flat is conveniently located for working in London, and the views across London are valued by myself and my visitors. The local community is very important to me, as is the mix of the community. The local area provides a range of facilities to meet the needs of the ethnically mixed population on the estate. These facilities include supermarkets and hairdressers, which would be hard to replicate if I was forced to move away from the locality.

**Case for Non Qualifying Objector Paul Palley Leaseholder (74 Wendover)<sup>206</sup>**

***General/Procedural Matters***

292. The Planning Inspectorate is rubber stamping a well-established housing policy without having proper regard to the factual evidence and objections made on behalf of the general public. The CPO is a foolish and wasteful housing proposal that entails the legal expropriation of my and other leaseholders' private properties.
293. The CPO in relation to 1 to 59 Wolverton was effectively pre-determined. The CPO in relation to the Heygate Estate heard evidence from a number of objectors and this evidence provided sufficient grounds to refute the allegation that there is compelling or necessary argument for the CPO. These submissions were largely disregarded by the Inspectorate.

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<sup>206</sup> Inquiry Doc 8, 39 & 40

294. Planning consent is insufficient to demonstrate a public interest in favour of a Compulsory Purchase Order. The law requires a compelling public interest for the grant of the CPO. One must demonstrate that such compulsory purchase is necessary and there are no other options available to satisfy the public interest. The power is intended to be used sparingly. Development plans are often general or vague. They are consistent with a large variety of development outcomes. They cannot be used to justify a particular choice of development because they are consistent with any reasonable development. Furthermore, unanimity of opinion in planning consultation does not in itself guarantee an objective or compelling test of necessity. Therefore there is no reason to equate planning approval with the right of compulsory purchase.

#### *Council's Response*

295. These matters are not a valid objection to the CPO.

#### **Public Interest**

296. It would be more cost effective to retain the Aylesbury Estate. Any problems on the estate are merely social problems. The socio-economic profile could be improved, if desired, by replacing a few of the troublesome occupants with professionals and other responsible occupants.

297. When the administrative costs and management costs associated with the regeneration policy are included, the rate of return on the proposed expenditure is very low and unacceptable. The L&Q development (Site 7) is likely to exceed £250,000 per dwelling and £37 million is to be spent providing 147 residential units.

298. The buildings are not beyond economic repair. Lifts, communal heating, block and estate lighting, mains renewal and new fire doors have already been renovated since the Council prepared its refurbishment figures in 2005. Some buildings require minimal work. The true cost of necessary refurbishment is currently about £20,000 to £25,000 per dwelling. On this basis public interest requires the retention of the dwellings.

299. The proposal would result in a large loss of public housing when measured in square metres. Under the regeneration plan there will be 1,450 more homes on the estate overall, but 700 fewer homes in total for council tenants to rent and about 250 fewer family homes to rent.

300. The term regeneration is properly applied to large metropolitan areas and towns where there has been a long term population loss and long-term economic decline. No such facts apply in the London Borough of Southwark. The Aylesbury Estate is fully occupied and over-subscribed with applicants for housing. The take up of the right to buy exceeds the national average. Property values on the estate exceed the average for large council estates. Education inspectors confirm that the academic performance by children at local schools is good to average. The level of vandalism and graffiti on the estate is average and therefore there are no particular social reasons for singling out the Aylesbury Estate for regeneration.

301. It is in the public interest for public housing authorities like the London Borough of Southwark to work jointly with councils in the north of England which could provide accommodation for asylum seekers, pensioners, disabled people,

the long term workless and others whose capacity to make an economic contribution is negligible.

### Council's Response

302. The Council has considered, and rejected on various grounds, alternative options for the estate. Comprehensive redevelopment of the Aylesbury Estate has been Council policy for some considerable time. The Council disputes the figures provided for refurbishment. As explained in the Council's Statement Of Case the regeneration will bring benefits not just to the fabric of the buildings, but to the public realm, transport infrastructure and community and other facilities. The works referred to have been carried out as part of the Council's on-going maintenance programme.
303. Taking into account the Order Land there would be a net loss of 108 units between the number of social rented units at February 2008 and the affordable units provided. There would be a loss of 1.6% habitable rooms as many of the affordable homes are larger family homes. There would be a 30% gain in floor area of affordable properties.
304. The mixed tenure development envisaged by the Council is intended to provide accommodation for all parts of the community whether they are able to afford to purchase their own home or not. It is not one of the Council's objectives to increase the per metre room rentals but to create a new high quality mixed tenure development to meet the needs of current and future residents. The proposals for the area will result in economic improvements as detailed in the Council's Statement of Case.

### **Other Matters**

305. The general public have never expressed an opinion on the question of demolition. Investors and non-resident leaseholders have never been consulted at all. Therefore there is no reliable guide for confirming public opinion. There were numerous objections to the AAAP. A large proportion of council tenants have always opposed the demolition of the estate.
306. There is evidence that mixed tenure housing association schemes have the same failings as traditional council estates and do not provide any net reduction in poverty. The private part of the scheme is beneficial to private owners, but is not inherently beneficial to the public.
307. There are few precedents for using compulsory purchase powers to carry out large scale private residential redevelopment. Powers under the 1957 Housing Act would permit the creation of new social housing elsewhere on private land. The existing buildings could be adapted to achieve the aims of the AAAP, through the use of ground floor parking areas to provide commercial premises, and the provision of modern environmental heating schemes to other blocks.
308. The proposal involves increased densities and may result in a net loss of open spaces. The Aylesbury Estate is being demolished because of its architectural appearance. However other Brutalist buildings have been reprieved. Limited redevelopment of the estate would suffice to deliver the purported advantages of any scheme. There are alternative solutions to the alleged problems on the estate which would avoid the use of compulsory purchase powers. Therefore the scheme does not pass the necessity test for the public use test.

### Council's response

309. There was extensive consultation and community engagement during the preparation of the AAAP.<sup>207</sup> The benefits of redevelopment were strongly supported. The level of new affordable housing could not be provided without the income from the sale of the number of private dwellings and the intermediate homes proposed. The aggregate area of the new proposed green spaces and pocket parks corresponds to the aggregate area of the green fingers set out in the AAAP. Architectural merit has not been one of the considerations of the Council in deciding to proceed with the regeneration of the estate. The social and economic benefits of the different regeneration options have been assessed in detail. Redevelopment of the estate has been identified as the optimum option for delivering the regeneration of the neighbourhood. The CPO is necessary to enable regeneration to continue as voluntary negotiations have failed.

### **Other Submissions Opposing the Council**

#### ***Victoria Briden Leaseholder ( Taplow, Thurlow Street) <sup>208</sup>***

310. I have lived on the estate since 1995 and have taken an active part in the life of the Aylesbury community. In 2001 I voted against demolition along with 73% of the residents. I bought my flat in 2003 with the expectation that I would make this my home for life. Although I am not yet in an active phase I am concerned about the new development and losing my home. Although there were consultation events these were not well attended. I have many reasons for wanting to keep my present home and stay in the area.

311. Many of my family had moved to this area and we are able to meet often and help each other with children, baby sitting and socialise together. My flat provides easy access to employment in Central London. The plans to demolish the estate have caused a great deal of stress to me and my neighbours.

#### ***Mr & Mrs Sisman Leaseholders (Missenden) <sup>209</sup>***

312. We moved into this flat in 1980, nearly 35 years ago. We are now aged 80 and 76. Our friends and family, including our children and grandchildren, now live in this area as well.

313. We have a 4 double bedroom flat with views towards the city on one side and a south facing living room on the other. Some of our grandchildren occasionally stay with us and work in the City. Travelling is easy due to the transport links in the area. We had no idea when we bought our home back in the 1990s that we would be forced out with insufficient means to enable us to buy a similar house or flat within the area. We still love living in the area even though we are both in wheelchairs now. We planned for a relaxing, stress free retirement with no mortgage or financial commitments to worry about. How can we be expected to restart our lives now by moving away from the area in which we have lived for over 40 years? We would be happy to be offered a similar property to that which we own at present. We would be unable to get a mortgage at our age. Over the

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<sup>207</sup> AAAP section 1.3 & Appendix A

<sup>208</sup> Witness statement

<sup>209</sup> Inquiry Doc 2

years we have spent so much money on the service charge and major works charges to maintain and reinvest in the whole estate, any offer should take this into account and all the money invested into the estate over the years.

***Joy Nyack-Binns Leaseholder (Wendover, Thurlow Street)<sup>210</sup>***

314. I bought my flat in 2004. At that time I had difficulty getting a mortgage because it was on the 10<sup>th</sup> floor. There were concerns that the building was suffering from subsidence and I requested an independent valuation of the flat. I went ahead with the purchase because there was no evidence of subsidence. I now find myself about to lose my property through no fault of my own. Due to my financial circumstances and age I would not be eligible for a mortgage. On the basis of the present offers I would need to leave the area and all of my friends. I feel that I should be given more options than are currently available to me in terms of alternative housing.

***David Cross Local Resident<sup>211</sup>***

315. I own a former Council property which is not subject to CPO. However, the changes to the character of the area are such that I may be required to leave. Moving away from the area would involve commuting costs. There is also likely to be an increase in absentee landlords.

***Karen Connolly Local Resident<sup>212</sup>***

316. My father lived on the Heygate Estate and was required to move as part of that scheme. He was elderly and the found it difficult to fit in at the place he moved to. This had an adverse impact on his health.

***Piers Corbyn Local Resident<sup>213</sup>***

317. In 2001 the ballot on the proposed stock transfer was rejected by tenants with 73% voting against it. This ballot has been ignored and no other comparable expression of opinion has been sought.

318. The Aylesbury was a very popular estate in its early years and it remains so despite the propaganda suggesting otherwise. It has a legendary community strength despite the architectural problems. The propaganda claiming the Aylesbury was the estate from hell was very dishonest.

319. The policy of planned dilapidation and undermining the community appears to have begun in 2002. The claims of dangerous structural weaknesses of the concrete blocks and serious problems the district heating system were false. The so called justifications for demolition are baseless. There has been no justification whatsoever even attempted for the many red brick blocks on the estate. The estate could be refurbished as is proven by many award winning projects for similar estates.

320. The specific rent structures and building plans put forward by NHHT make the new estate totally out of reach of current residents. The overcrowded nature of

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<sup>210</sup> Inquiry Doc 29

<sup>211</sup> Oral Evidence

<sup>212</sup> Oral Evidence

<sup>213</sup> Inquiry Doc 36

the new plans will make it a shadowy, dark and dangerous place apart from the luxury flats and penthouses facing the park. This would contrast with the spacious and green Aylesbury Estate at present. The development is against the interests of, and not supported by, the people it was supposed to help and must be rejected.

### **Laura Fudge Local Resident**

321. My preference would be to remain in my existing flat on the estate. If that is not possible, I would rather be a Council tenant in the area, rather than a NHHT tenant on the estate. The reason for this is the difference in rents. NHHT rents mean that I would be unlikely to earn enough to avoid claiming benefits and I would prefer not to live on benefits.

### **Gerlinde Gniewosz Member of the Public <sup>214</sup>**

322. What due diligence did the Council Officers exercise in respect of tender prices and costings? Evidence in Lambeth is that initial estimates and actual costs can be very different due to the lack of due diligence.

323. Did the members and officers consider the other costs of demolition? For example if the number of affordable houses on the proposed redevelopment is reduced by 160, this would suggest that the Council would be unable to accommodate 160 high priority households. These high priority households are likely to be in temporary accommodation for which the Council would need to pay market rent. Due to the difference between market and social rent this could amount to a considerable extra cost each year. It is therefore important to take such costs into account.

324. Did the members and officers ever review the viability of the refurbishment post 2005? There have been legislative changes as well as changes in costs and technical solutions. It could be that demolition or redevelopment is no longer viable compared to refurbishment.

### **Inspector's Conclusions**

*(Numbers in square brackets refer to relevant paragraphs in this Report)*

325. The Order is made under Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004). The Council's Statement of Reasons confirms that the CPO is required to continue the regeneration and redevelopment of the Aylesbury Estate where the Order Land is situated. Its purpose is to secure the regeneration of the Aylesbury Estate in accordance with the provisions of the Aylesbury Area Action Plan and in doing so contribute towards significant social, economic and environmental improvements.

326. A compulsory purchase order should only be made where there is a compelling case in the public interest. Paragraph 76 of *Guidance on Compulsory Purchase Process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion* (the Guidance)

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<sup>214</sup> Inquiry Doc 37 These comments were made in writing during the course of the inquiry



explains that any decision about whether to confirm an order made under section 226(1)(a) will be made on its own merits. 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;
- 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; and
- Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means.

My recommendation flows from the consideration of these matters and other issues raised at the inquiry.

***Whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area***

327. Paragraph 74 of the Guidance states that any programme of land assembly needs to be set within a clear strategic framework. Such a framework will need to be founded on an appropriate evidence base, and to have been subjected to a consultation process, including with those whose property is directly affected. The planning framework providing the justification for an order should be as detailed as possible in order to demonstrate that there are no planning or other impediments to the implementation of the scheme. In addition, the National Planning Policy Framework is a material consideration and should be taken into account.
328. The development plan for the area includes the London Plan with Consolidated Alterations (2015), the Core Strategy (2011), the saved policies of the Southwark Plan 2007 and the Aylesbury Area Action Plan (AAP). Following the publication of the NPPF in 2012, the London Plan was subject to revised minor alterations to ensure consistency with it. Although the Core Strategy and the AAP both pre-date the NPPF, the Mayor has confirmed that they are in general conformity with the London Plan.<sup>[50]</sup> Moreover, the AAP policies on which the Council relies are broadly consistent with those within the NPPF.
329. The delivery of a mixed tenure development is consistent with London Plan policies 3.8 and 3.9 which together support a range of housing types across all types of tenure and the creation of mixed and balanced communities. <sup>[48]</sup> Core Strategy policies 5 and 6 have similar aims.<sup>[49,50]</sup> AAP policies BH3, and BH5 are also consistent with this aim.
330. The regeneration of the area is supported by London Plan policy 2.14, the vision for the Aylesbury Action Area within the Core Strategy and the AAP. <sup>[48,49]</sup> Walworth and the Aylesbury Estate is identified as a regeneration area. London Plan policy 2.14 provides that the Mayor will work with partners to co-ordinate the sustained renewal of such areas.<sup>215</sup> Policy 3.8 indicates that Londoners should have a choice of homes that they can afford which meet their requirements for different sizes and types of dwellings. <sup>[48]</sup> Policy 3.9 provides

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<sup>215</sup> CD22 page 56

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- support for building mixed and balanced communities which include a range of dwelling types and tenures. [48] Policy 3.14 advises that the loss of housing, including affordable housing, should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floorspace.[48]
331. The Core Strategy vision for Aylesbury Estate, together with Core Strategy policy 5, states that the Council will use the guidance in the AAAP to work with stakeholders to achieve a phased redevelopment of the Aylesbury Estate which will deliver around 4,200 new homes over the 15 year lifetime of the Core Strategy.[49] Core Strategy policy 6 requires the provision of as much affordable housing as is financially viable. [49]
332. The AAAP was adopted in 2009 and, subject to the recommended modifications, was found to be sound. [53] The Inspector acknowledged that the stock transfer ballot rejected the demolition and stock transfer of the estate to a Registered Social Landlord, but he was clear that there was no conflict between that result and more recent consultations carried out by the Council in relation to the AAAP. [55] He was also satisfied that the consultation in respect of the AAAP complied with the Statement of Community Involvement.
333. Objectors submit that the proposal would result in a loss of social housing contrary to London Plan policy 3.14. [145] The purpose of policy 3.14 is not to safeguard social rented housing, however, it states that '*the loss of housing, including affordable housing should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floorspace*'. There were 566 dwellings on the Order Land, all but 55 of these were social rented. The scheme proposes 830 dwellings, of which 406 would be affordable.<sup>216</sup> Therefore there would be a net loss of 105 affordable dwellings and 207 social rented dwellings.
334. When assessed against the Mayor's Housing SPG [147], which advises that calculations as to the loss of affordable housing can be made on the basis of habitable rooms, there would be a loss of 3 habitable rooms of affordable accommodation on the Order Land. In the context of the estate overall there would be 2,012 affordable dwellings as against the 2,249 at present. This would represent an overall loss of 237 affordable dwellings across the estate, but there would be a gain of 457 affordable habitable rooms due to the proportion of larger family dwellings. [148] Accordingly, whilst there would be a loss of social rented housing, the scheme on the Order Land and the outline scheme would both deliver affordable housing in accordance with London Plan policy 3.14.
335. The table submitted by the Council shows that 304 of the 830 dwellings to be provided on the Order land would be social rented. [139] Therefore the scheme would comply with AAAP policy BH3 in terms of the proportion of social rented dwellings to be provided on the Order Land.
336. Objectors are concerned that the definitions used in the DPA and s106 Agreement may not be robust enough to ensure that social rented housing is delivered rather than affordable rented housing. [135] They were particularly concerned about the interpretation of 'target rent' within the DPA.[131,132] They referred to Bermondsey Spa, where the Council accept that affordable rent was delivered in place of social rent.[136,144] In order to address this concern the

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<sup>216</sup> Inquiry Doc 17

definition of affordable rent in the s106 agreement relies on the definition of social housing within the Home and Communities Agency Rent Standard Guidance Appendix 1. [67,142] This definition reflects the request of the 35% Campaign to the Planning Committee at the time at which the applications were considered. [142] The AA also entered into a Deed of Clarification<sup>217</sup> which seeks to ensure that the definition of social rented housing is extended to the outline scheme. It confirms that either 4,790 habitable rooms, or 50% of the habitable rooms delivered, whichever is greater, shall be provided as affordable housing. The DPA sets out minimum requirements for the delivery of target rented accommodation. [68] I am therefore satisfied that the scheme will deliver the proportion of affordable and social rented accommodation required by the AAAP, the Core Strategy and London Plan.

337. The Objectors submit that regardless of any requirement within the s106 agreement, there is a possibility that NHHT may not deliver social rented housing as required, particularly given NHHT support for affordable rent tenure. [133,136] They are of the opinion that should NHHT fail to deliver the required social rented housing the Council would be unlikely to enforce the terms of the s106. This view is understandable in the light of the situation at Bermondsey Spa. However, in that case the Council investigated the matter and based on legal advice regarding the interpretation of the s106 agreement decided not to take any further action. [144] In the case of the Order Land, the definition of social housing within the s106 differs from that used in respect of Bermondsey Spa. Consequently, it is more robust than that used for Bermondsey Spa and therefore should not constrain the Council from enforcing the provision of social rented housing on the Order Land.
338. The redevelopment of the Aylesbury Estate and the mix of dwellings seek to create a mixed community. On behalf of the Objectors, Professor Lees submitted that such policies give rise to gentrification and the displacement of social rented housing tenants.[210,214] In the case of the Order Land there will be a significant reduction in the number of social housing dwellings available, however, this must be balanced against the increase in dwellings suitable for larger families. In addition, the overall increase in dwellings and the wider range of tenures available will improve housing opportunities overall. The creation of mixed communities is consistent not only with development plan policies within the London Plan, Core Strategy and AAAP, but also with paragraph 50 of the NPPF. [71,74]
339. Overall, I conclude that the scheme for the Order Land accords with the planning Framework for the area. The Framework was subject to an appropriate consultation process, which included residents on the estate. Although some events may not have been well attended, the Statement of Community Involvement details a range of consultation initiatives undertaken by the Council. I therefore conclude that the scheme does not conflict with paragraph 74 of the Guidance and accords with the planning framework for the area.

## Well-Being

340. Section 226(1A) of the TCPA provides that the acquiring authority must not exercise the power of CPO unless it thinks that the proposed development,

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<sup>217</sup> Inquiry Doc 62

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redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which it has administrative responsibility.

*Economic*

341. The Environmental Statement sets out the economic benefits of the scheme for both the Order Land and the estate. [80] The scheme will create a considerable number of employment opportunities during the construction phase and this would be a significant economic benefit. Whilst there is potential for the provision of additional permanent employment during the post-construction period, there is less certainty as to the number of jobs that are likely to be created. It is unclear whether these would provide an uplift by comparison with previous employment levels on the FDS or existing employment levels on the estate as a whole. Nonetheless, the increase in population will be beneficial to the surrounding area, the borough overall and the wider London area due to additional spending generated by the increase in households.
342. Some residents believe that the rents charged by NHHT will be higher than the existing social rents and this could mean that more people would be likely to become dependent on benefits due to the level of income necessary to meet such rents. [127] During the early phases of regeneration, including the FDS, most tenants will be accommodated in properties off the estate.<sup>218</sup> Whilst residents' concerns regarding future rent levels on the estate are understandable, the Council has confirmed that social rents would be set according to the formula within the s106 agreement. It also stated that no tenant would be required to transfer from a Council rented property to a NHHT property.[205]
343. Based on the information submitted to the inquiry it is likely that the scheme would result in a significant reduction in the number of social rented dwellings within the Borough. This could have implications for the number of residents who need to rely on benefits in order to meet their housing costs. It was also suggested that the loss of social housing could add to the Council's overall housing costs if it is unable to provide accommodation for those in housing need. However, no evidence was submitted as to the consequences of the scheme for the Council's borough wide housing costs or responsibilities.
344. Whilst the ALG acknowledges that the scheme on the FDS, including the delivery of social rented housing, is not dependant on viability, it is concerned that any shortfall in funding/profitability may need to be made up in later phases and could have implications for the economic well-being of the wider area. It submits that, in the absence of an un-redacted copy of the DPA, it is not possible to assess whether the scheme would benefit the well-being of the entire area.[14] Mr Palley also considers that the scheme is not in the interest of the economic well-being of the area.[297,298] In his view it would be more cost effective to retain the estate and repair the existing buildings.
345. The submitted information confirms that the FDS will be delivered regardless of viability. For this reason the CPO will not adversely affect the economic well-being of the area. The implications of any subsequent phases for the economic

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<sup>218</sup> AAAP para 7.26

well-being of the area will need to be considered if, and when, further CPOs are made.

### *Social*

346. The proposal would deliver 264 additional dwellings on the Order Land. This would contribute to the need for dwellings within the Borough and London overall. The provision of market housing as part of the scheme would result in a more socially and economically mixed community in accordance with the aims of development plan and national planning policies. [48,77,78,147] The scheme for the Order Land would also include an extra care facility for the elderly and bespoke facilities for people with learning difficulties.[138] It would thus address housing needs that are not currently met either within the Order Land or the estate.
347. Objectors consider that due to the cost of the market and affordable dwellings, together with the reduced number of social rented dwellings available, existing residents, including many leaseholders, would be unable to afford them. [127,145] They consider that the scheme would give rise to the gentrification of the estate and that existing residents would be displaced.
348. Professor Lees submitted displacement maps in support of this view to illustrate where leaseholders and tenants from previous phases on the Aylesbury Estate have moved to.[214] Whilst it is apparent that in some cases tenants and leaseholders have moved a considerable distance away, there is no quantifiable evidence to illustrate the proportion that have remained within the borough or the local area. Neither is there any substantive evidence to indicate whether those who moved out of the area did so due to preference rather than necessity. Moreover, as acknowledged by Professor Lees, the maps only show those who have moved away from the area [73], therefore the weight to be attributed to these maps is limited. Professor Lees also submitted anecdotal evidence to indicate that people were moving out of the area due to necessity rather than choice, and that existing residents had genuine concerns about the effect of the proposal on the break-up of their community. No evidence was submitted to indicate whether these views were representative of the majority of those who have moved.
349. Evidence presented to the inquiry confirms that many existing residents, not only those remaining on the Order Land, value the strong sense of community which is evident throughout the estate. [263,272,278,280,287,311,315] They fear that this sense of community will be lost as a result of the regeneration, particularly if they need to move away from the area. Whilst the existing community will be disrupted, particularly during the early phases of regeneration, the AAAP envisages that about 50% of the existing tenants will be re-accommodated within the estate.<sup>219</sup> This will assist with maintaining the existing sense of community.
350. Many existing tenants are concerned that even if they are offered the opportunity to return to the estate they will be unable to afford the higher rents charged by NHHT. This concern was recognised by the 2005 Executive Committee Report and relates not only to the cost of higher rents, but also the ability of tenants to avoid the need to rely on housing benefits. However, as

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<sup>219</sup> AAAP para 7.2.6

explained above, 75% of the affordable housing will be social rented housing with rents set in accordance with the Home and Communities Agency Rent Standard Guidance definition. [67,142]

351. There is a high proportion of BME residents within the estate. Evidence submitted to the inquiry indicates that they rely on the services provided in the local area to meet their particular needs which they consider would not be readily available in another area. [291] The majority of residents are Council tenants and would therefore be likely to be rehoused within the borough boundary. Those in later stages of the regeneration will have the opportunity to move within the estate, and all tenants have the right to return to the estate. Therefore taking account of the ethnic mix within the borough overall, I am not convinced that residents relocating from the estate will be unable to find the services on which they rely. [287,291]
352. The Objectors suggest that the mixed community policy is unnecessary since the existing community is already socially mixed. [213] The Equalities Impact Assessment in relation to the AAAP noted that the estate was ethnically diverse, 67% of the population belonging to a minority ethnic group. However, it also noted the estate suffered from problems with overcrowding, low income and lower educational attainment compared to the borough as a whole and London overall. [81] The mixed communities policy seeks to address some of these matters.
353. Overall the proposal would deliver benefits in terms of additional dwellings and facilities. The provision of the extra care and facilities for people with learning difficulties would help to meet existing needs in the area and would contribute to its well-being. The additional dwellings proposed, including the market dwellings, would help to meet the pressing need for housing, both within Southwark and the wider London area. I appreciate that many existing tenants will not be able to afford the proposed market housing or any dwellings that are not available for social rent. For others, the development will provide a wider choice of housing opportunities with the option of purchasing a dwelling under a shared ownership housing scheme.
354. Leaseholders do not have a right to return to the estate. Whilst it is possible for them to bid for some of the new homes within the locality, in practice many are unable to pursue this option for financial reasons. As a consequence those wishing to remain in the area will be reliant on the rehousing options offered by the Council.

#### *Environmental*

355. The Council submits that the estate suffers from poor quality design and a lack of interest between buildings. In addition, it considers that there is a lack of permeability and perceived unfriendliness on the street. [82] It also points to the technical challenges associated with the maintenance of the blocks and the poor thermal performance of all buildings on the estate.[81,83] These issues were noted by the Inspector for Site 7 and the AAAP Inspector.[85]
356. The estate is constructed using the large Jesperson concrete panels which have given rise to concerns regarding the structural robustness of the buildings. Similar panels were used at Ronan Point and there are concerns that the buildings could be at risk of disproportionate collapse. The Conisbee Report

- (November 2004)<sup>220</sup> identified that the only two viable options for the estate were to remove the gas supplies and strengthen the blocks or to demolish and redevelop the estate. It recommended the removal of gas supplies to manage the risk while a more detailed scheme is prepared. The gas supply has since been removed, however if the 5 and 6 storey blocks are to be retained they will require strengthening. Both the AAAP Inspector and the Site 7 Inspector accepted that the buildings were beyond economic repair.
357. On behalf of the Objectors Dr Campkin explained that politically, and in the media, the estate had been perceived as a 'sink estate', but that this reputation was not justified. Crime figures show that crime on the estate is lower than the borough average. Whilst it is acknowledged by residents that the estate does have a number of problems, various policy changes over the years have hindered attempts to resolve the issues.[206]
358. The most striking aspect of the estate is the style of architecture, which is derived from the use of large Jespersen concrete panels and the length of the some of the blocks. These features combine to give the estate a brutalist appearance that is at odds with modern day architectural design and aspirations. Some of the access balconies are of a considerable length, but they are largely well maintained, even in larger blocks such as Wendover.
359. Currently the Order Land presents a relatively bleak environment, due to the high level of vacancy following the relocation of tenants and the security fencing around this part of the estate. However, overall the estate appears to be well-kept with the public areas well used by residents. The layout of the estate seeks to separate traffic from pedestrians and amenity areas. This contributes to both the strengths and weaknesses of the environment within the estate.
360. Throughout the estate there is a range of amenity space including semi-private spaces, such as those within the Order Land, and more public spaces, such as the playgrounds, dog exercise areas and allotments. In addition, many ground floor dwellings benefit from small private gardens, which for the most part are well maintained and evidently a source of pride to the occupants. The semi-private spaces are over-looked by the surrounding dwellings, are safe from vehicular traffic, provide areas of tranquillity for residents. They receive good levels of light with limited over-shadowing. At present, these areas on the Order Land are unkempt, but this is due to a lack of maintenance, rather than a failure of layout.
361. For the most part the public spaces on the estate provide high quality amenity areas, with little evidence of vandalism or neglect. The ALG explained the importance of these spaces for young families and the contribution they make to towards a sense of community. [280,281] In addition, they provide an attractive outlook for occupants of the surrounding flats and opportunities for socialisation.
362. The separation of the traffic from amenity areas has resulted in ground floor garages or parking courtyards facing the public realm. The parking courtyards appear to be well used. In contrast, the garages appear to be largely vacant and create a harsh and forbidding environment. Together with the length of the various blocks, these areas combine to create a poor quality environment at street level. However, this is not true of the whole estate, in some instances the

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<sup>220</sup> CD25

- flats face towards main roads whilst in other parts of the estate the buildings are low rise red brick with an attractive and pleasing character and appearance.
363. As noted by the AAAP inspector, the flats are valued by residents for their spaciousness and the light and airy living conditions they provide. This was evident in all of the flats I visited. In addition, many flats benefit from views towards Burgess Park or across London, and these views are highly valued by residents.[263,279,291,313] The estate remains popular with those on the Council waiting list, and has a relatively higher proportion of leaseholder properties by comparison with other estates. I am aware the Inspector in relation to Site 7 reached a different view in terms of the physical environment of the estate. However, there were no outstanding leaseholder objections in respect of that CPO, and it would seem that there was limited evidence before him other than that submitted by the Council. It is also unclear whether he visited the wider estate. My view above relies on the evidence submitted to the inquiry by all parties and my own observations at the time of my site visit.
364. It was suggested by some objectors that the physical problems within the estate have been exaggerated in order to justify the case for demolition.[319] However, it is clear that the heating system has failed in the past, and it is indisputable that a number of the blocks need strengthening. Furthermore, the Council is clear that the case for demolition relies on the layout and poor environment of the estate and not just the condition of the buildings.
365. AAAP policy PL1 sets out detailed requirements for the streets and seeks to ensure that they will be designed as attractive public spaces, whilst policy PL4 specifies appropriate building heights and policy PL7 requires the provision of high quality open space.
366. The proposed layout provides wide streets with well-defined building blocks. It provides linkages with Burgess Park and the surrounding area. The layout broadly accords with that envisaged by the AAAP. There would be clear, well landscaped pedestrian links with the remainder of the estate thereby integrating the estate with the surrounding area.<sup>221</sup>
367. The Albany Road frontage would present a much more built-up frontage by comparison with the existing estate and includes 3 tall buildings ranging from 14 -20 storeys in height. This exceeds the number of tall buildings envisaged by AAAP policy PLI4, although some of the intervening blocks would be lower than suggested by the AAAP. The buildings would use a varied palette of materials and due to the varied nature of the elevations and articulation of the proposed buildings they would provide a greater degree of visual interest by comparison with the existing estate.
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.<sup>222</sup> 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

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<sup>221</sup> Council's Objection Statement App1 p 34 paras 133-139

<sup>222</sup> CD24 p 16-19



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.<sup>223</sup> 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.

#### *Individual Impacts*

371. In terms of individual leaseholders it is apparent that the scheme will have significant economic and social impacts. Most leaseholders have strong family and community ties to the locality.[263,272,277,278,287] For many this was a factor in their decision to purchase their property. It is not for me to comment on the amount of compensation payable. Notwithstanding this, most leaseholders wishing to remain living close to the estate will need to contemplate either shared ownership or shared equity. Both of these options require a financial assessment, which leaseholders find intrusive. [226,275] In addition, they will be required to put all but £16,000 of their financial assets towards any property purchased under these schemes.
372. Many of the leaseholders are of an age where they would be unable to obtain a mortgage to make up any shortfall and their future earning potential is limited. The requirement to use their savings and other investments severely limits their ability to choose how they spend their retirement and the use to which they put their savings and investments.
373. I am aware that the leaseholders are not obliged to accept either of these options and can choose to purchase a property on the open market. For many of the leaseholders moving away from the area will have significant adverse consequences in terms of family responsibilities, including the care of older

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<sup>223</sup> Council's Objection Statement App1 p 38 paras 157-163

relatives and children's education. However, due to the difference between the valuation offered by the Council and the cost of alternative properties in the locality, any leaseholders wishing to remain living in the area are likely to be reliant on these options.

### *Conclusion*

374. Economically the scheme will deliver significant benefits in terms of jobs and spending in the area. Due to the terms of the DPA the scheme for the FDS would be unlikely to have any adverse financial implications for the wider area. The Council disputes Mr Palley's figures, and whilst upgrading the existing flats would be likely to involve less expenditure by comparison with the regeneration scheme, it would not deliver the long term economic benefits associated with the increase in population.
375. Due to the need to decant the existing residents the scheme for the FDS would disrupt the existing community. However, in later phases many of the existing residents would be able to remain on the estate and this would assist with maintaining the existing community. At the present time, due to the low number of residents on the Order Land, the impact of the CPO on the community of the estate would be limited. The delivery of a mixed community and 264 additional dwellings would be a benefit of the proposal, as would the greater proportion of larger family dwellings. The scheme would also assist with addressing the needs of minority groups such as the elderly and those with learning difficulties.
376. Environmentally, the scheme would deliver benefits in terms of sound and sustainable buildings. It would also provide a more varied townscape. It would also provide a more legible and user friendly environment at street level. However, due to the height and number of the proposed dwellings, the environment in some individual flats, and the communal courtyards would fall considerably short of the Council's usual standards, and the existing standards on the estate. In addition, the scheme would have considerable economic and social dis-benefits in terms of consequences for those leaseholders remaining on the Order Land.
377. I conclude that the CPO would not fully achieve the social, economic and environmental well-being sought. In reaching this view I have had regard to the fact that planning permission has been granted for the redevelopment of the Order Lands.

### ***Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means***

378. Objectors submit that the aim of regenerating the estate and the provision of a mixed tenure community could be achieved by the refurbishment of the estate in a similar manner to that proposed by the Council prior to 2005, or alternatively by way of much more limited work to individual flats.
379. Following the ballot in 2001, which included the demolition and redevelopment of the estate, the Council developed a refurbishment scheme for the south-west corner of the estate (Site 1A). It was intended that this scheme would provide a model for the remainder of the estate. Residents were consulted on this scheme and it had a high level of support.[174] The scheme was prepared by Levitt Bernstein and proposed structural strengthening of the 5 & 6 storey blocks, the

removal of the walkways linking the blocks, improvements to the legibility, enjoyment and security of the estate, and bringing the dwellings up to modern day standards.

380. The costs of these works were reported to the Executive Committee in September 2005. The report set out the case for redevelopment as an alternative to refurbishment. The reasons for this recommendation included the structural condition of the properties, the quality of the environment, value for money and the costs of refurbishment.[101,102,104] The report also identified a funding gap in terms of the delivery of the refurbishment scheme.
381. Some Objectors suggest that the buildings do not suffer from structural weaknesses and that there were no problems with the District Heating System.[319] However, these views are at odds with the various technical reports. The report to the Executive Committee referred to the failure of the heating system the previous year. It has recently been upgraded to extend its life.[203]
382. Whilst the refurbishment option would deliver some of the benefits associated with redevelopment, it would not deliver a comparable number of additional homes, transform the appearance of the estate or improve the permeability of the estate to the same extent as redevelopment. Whilst there is no scheme specific to the Order Land before me, the Levitt Bernstein scheme provides a reasonable indication of what could be achieved.
383. The Objectors suggest that the figures put to the Committee were misleading and note that no figures in relation to redevelopment were put forward.[176] The purpose of the report was to seek authorisation to the redevelopment of the estate as an alternative to refurbishment. The Council submits that due to the constraints on funding, the refurbishment scheme was not viable or deliverable. The report explained that assuming that other sources, including an Arms Length Management Organisation (ALMO) could provide £44 million, there remained a funding gap of £30 million.<sup>224</sup> It concluded that funding was not available in order to progress the refurbishment scheme. The figures put to the Executive Committee are more than 10 years old and there is no submitted evidence which would allow me to compare them with the costs of the scheme for the Order Land. Moreover, it is not for this inquiry to revisit that decision.
384. The Objectors also suggest that the Council should consider an approach similar to that at Six Acres Estate in Islington. In that case, an estate similar in construction and appearance to the Aylesbury Estate was refurbished. They suggest that these works were funded by the provision of additional housing on the estate.[182] The Council state that the scheme was funded by way of an ALMO. This would involve a stock transfer ballot which was previously rejected by residents.[257,317]
385. Only limited and largely anecdotal information was submitted to the inquiry in respect of the Six Acres Estate. It is unclear as to the full extent of the works required to the dwellings on this estate or the number of blocks involved.

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<sup>224</sup> CD8 para 3.2

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Nevertheless it would seem that at least one block was demolished in order to progress the scheme.<sup>225</sup>

386. 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. It would however, fail to deliver certain benefits of the current scheme, including the extra care housing, housing for the disabled and the additional homes proposed. On the basis of the information submitted to the inquiry I am unable to conclude that the funding arrangements in relation to the Six Acres Estate would be available to, or appropriate for, the Aylesbury Estate. In these circumstances, at the present time refurbishment does not represent a viable or deliverable alternative to the scheme for the Order Land.

### ***Viability and Delivery***

387. The guidance provides that in preparing its justification, the acquiring authority should address both sources of funding and the timing of that funding. In the case of the former, the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required.

388. The Council submit that under the DPA the Acquiring Authority bears overall responsibility for land assembly and the delivery of vacant possession of the land proposed for redevelopment. It has identified resources in order to meet that obligation.[91,120] The delivery of development at the FDS is not contingent upon any viability assessment. Notwithstanding this, NHHT confirmed at the inquiry that it is satisfied that the development proposed is viable. There is recent Board approval for Notting Hill's detailed five year financial plan, which includes the redevelopment costs of the Order Lands.[92]

389. The Objectors point to a lack of GLA funding for the scheme. [149,150] The Council explained that the scheme is not dependant on such funding, but nonetheless grant funding from the GLA has been allocated to the scheme and this will be used towards the capital cost.[159] There is no compelling evidence to support the Objectors' assertion that NHHT's financial situation is 'precarious'. [154] NHHT's Finance Director confirmed that reductions in social rents due to changes in government policy could be absorbed with minimal impact on its existing plans.<sup>226</sup> It was also acknowledged that Government plans to extend the right to buy to housing association tenants may have an impact on NHHT's future income. However, due to the terms of the DPA, this would not undermine the viability of the scheme on the Order Land. Therefore these changes in policy would be unlikely to impact on the delivery of the scheme.

390. The overall scheme for the Aylesbury Estate is anticipated to take 15 years to deliver. The fact that funding for the entire scheme has not been identified at this stage does not undermine the case for the CPO in relation to the FDS.

391. On the basis of the evidence submitted by the Council in relation to negotiations with the Ministry of Justice it would seem that there is a reasonable prospect that the Council will be able to acquire Ellison House.[95] Nonetheless, I

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<sup>225</sup> Inquiry Doc 52

<sup>226</sup> AA Rebuttal Statement para 2.2

accept that this matter may take some time to resolve. There is no certainty that the suggested replacement site will be suitable and acceptable to the public. It may be that the planning process is prolonged. I conclude that the scheme is unlikely to be blocked by any physical or legal impediments to implementation and therefore would comply with paragraph 15 of the Guidance.

### **Equalities Issues**

392. An Equalities Impact Assessment was undertaken in January 2009 as part of the AAAP process.[51,106] This recommended introducing a package of measures including compensation for leaseholders to offer the widest possible choice of rehousing opportunities.[107] The ALG submit that the failure of the Acquiring Authority to undertake an Equalities Impact Assessment addressed expressly to the leaseholders represents a failure to comply with the Public Sector Equality Duty (PSED).[232]
393. The PSED arising from section 149 of the Equality Act imposes a procedural requirement on the decision-maker to "have due regard" to various specified equality issues when taking their decisions. The Equalities Impact Assessment pre-dated the Equality Act. Nevertheless, subsequent decisions in relation to the estate, such as the planning applications and the CPO, have revisited the community impact of the scheme and taken account of the PSED. Any shortcomings in relation to equalities assessment at the time of the AAAP cannot be considered as a failing in relation to the PSED since it was not in place at that time.
394. It is apparent that the implications of the scheme for leaseholders differ from the impact on tenants. Whilst being a leaseholder is not a protected characteristic, many of the remaining leaseholders on the FDS are from BME groups. As acknowledged by the AAAP Equalities Assessment the estate as a whole is ethnically diverse. Limited evidence was submitted to the inquiry as to the ethnicity of the leaseholders either on the FDS or the estate as a whole, but as explained above 67% of the estate's population belong to an ethnic minority group. The leaseholders from these groups provided evidence as to the importance of retaining contact with their own culture. In my view the importance of remaining in the locality for cultural or family reasons is not confined to leaseholders from BME groups, it also applies to others such as Mr Kerrigan.[277,278] I have had due regard to the Public Sector Equality Duty (PSED) contained in the *Equality Act 2010*, however, for the reasons given above, I am not persuaded that the CPO would discriminate against BME leaseholders.

### **Failure To Acquire Homes By Agreement**

395. The Acquiring Authority submits that CPO powers have been used as a last resort. Although the majority of homes have already been acquired by agreement, the Acquiring Authority's attempts to acquire all of the homes by agreement have not succeeded. The evidence submitted to the inquiry indicates that the main reason for this is due to the compensation and rehousing options available to leaseholders.
396. Leaseholders submitted extensive evidence in relation to their discussions with the Council in respect of the value of their homes, including the perceived failure on the part of the Council to base the market value on two independent

- valuations.[218,219,268] They also suggest that the Council did not allocate sufficient funds to purchase their properties at market value.[220] The Council does not dispute that the values offered were based on on-estate values. It justifies this approach on the basis of two Upper Tribunal (Lands Chamber) decisions in the cases of John and Joshua.[39]
397. Paragraph 2 of the Guidance states that the confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Paragraph 3 of the Guidance 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. It provides a greater degree of flexibility by comparison with the previous regime.
398. For the reasons explained above, the Acquiring Authority submits that its offers should not be assessed against this new guidance since it is not intended that the guidance should apply retrospectively.[34,37] In the light of the considerable period of time between the submission of the CPO to the Secretary of State and the publication of the Guidance, I agree that that in this regard the Guidance should not apply retrospectively. Moreover, it is not for me or the Secretary of State to form a view on the amount of compensation payable if the CPO is confirmed.
399. Compensation is not a matter before the inquiry. Nonetheless it is evident that the values offered by the Council are unlikely to enable the leaseholders to purchase a property on the open market in the locality. Accordingly, most leaseholders will either need to move away from the area, or seek rehousing assistance from the Council in the form of shared ownership, shared equity, or as a Council tenant. All of these rehousing options will necessitate leaseholders undergoing a financial assessment as part of the process.
400. Shared equity would enable leaseholders to remain in the locality and own part of their new dwelling. They would not be required to pay rent. Major works service charges would be apportioned to their share of the property. Nonetheless, eligible leaseholders are required to invest any capital in excess of £16,000 in any shared equity or shared ownership property. At the inquiry the Council explained that this aspect of the rehousing/compensation package is currently being reviewed. Nevertheless, at the present time it represents the reality for most leaseholders.
401. Evidence presented to the inquiry demonstrates that the assessment and the requirement to invest other capital/savings in the property place a considerable emotional and financial burden on leaseholders. A number of leaseholders no longer have outstanding mortgages and rely on their savings as a source of income and security for the future. It not only impacts on their future security, but also upon their future plans, including plans to return to education or travel, as well as maintain independence in old age. Due to their age, many of the remaining leaseholders would struggle to re-establish the savings they have accrued.
402. 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

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.

### ***Condition of properties***

403. The Objectors consider that due to the cost of previous works to maintain and upgrade the dwellings on the estate, which in many cases have included significant works [195,196,298], the redevelopment of the estate, including the FDS, does not represent good value for money. The regeneration of the wider estate is likely to take many years. The Acquiring Authority explained that it is necessary to keep all dwellings to a basic standard, currently the 'Warm Dry Safe' programme, in order to prolong the life of the buildings and ensure that they can remain in residential use until they are required for the scheme. It is evident that in reaching its decision in 2005 the Executive Committee was aware of the need for on-going works of maintenance and refurbishment in order to ensure that the dwellings remain in satisfactory condition and took these into account in reaching its decision.
404. There can be little doubt that circumstances for the remaining residents on the Order Land are extremely difficult in terms of the environment in which they currently reside. There have also been a number of issues regarding the maintenance of these dwellings and services.[116,270,272,289] The environmental issues within the Order Land are largely due to the very low number of residents remaining within the Order Land. The Council is aware of the various issues raised by residents and is taking measures to address these concerns.[117]

### ***Stock Transfer Ballot & 2005 decision***

405. The stock transfer ballot in 2001 related to the transfer of the housing stock to a housing association. Following this ballot the Council developed a refurbishment scheme for the estate. At the Executive Committee in September 2005 the Council resolved 'in principle' to pursue redevelopment as an alternative.
406. Objectors maintain that the Executive Committee decision was taken on the basis of inadequate and misleading information in that the committee voted in favour of demolition with no evidence in respect of comparative costs before it. Moreover, they suggest that the matter should not have been progressed without a further ballot and that various 'milestones' set out in the report have not been complied with. For this reason they suggest that there is no legitimate policy justification for the demolition.
407. The 2005 report drew on the findings of specific research papers commissioned by the Council. Whilst the actual papers were not specifically referenced or attached, the content is summarised in the body of the report. The report sets out the funding position for the refurbishment of the estate, and the recommendation to demolish was based on the funding constraints and perceived value for money. Many of the milestones were addressed within the subsequent 2006 report (CD13).[192]
408. Regardless of the legitimacy of the 2005 decision, there can be little doubt that the principle and viability of the regeneration scheme has been fully considered by the Council, not least in the context of the AAAP, the Core Strategy

and London Plan. It forms an integral part of all of these statutory development plans. Accordingly, it would have been open to the Council to review the decision to demolish the estate during the intervening 10 years. It is therefore incorrect to claim that the public have not had an opportunity to comment on the decision to demolish the estate. At each stage of consultation in respect of these plans, as well as at the time of the planning applications, residents of the estate and members of the public would have had the opportunity to comment on the scheme.

### ***Whether the CPO Would Be in Accordance With the Law***

409. The Objectors submit that much of the conduct of the Acquiring Authority has been 'not in accordance with the law.'<sup>[250]</sup>
410. I have found above that there was not a failure on the part of the Council to comply with Section 149 of the Equality Act 2010 in relation to the leaseholders. They also suggest that the approach of the Council Valuers relies on an unreasonable interpretation of *Joshua v Southwark* (paragraph 28) and that of *Judi Bos*.
411. The Objectors refer to a recent judgement in respect of *Bokrosova* where it was found that a local planning authority which had decided to redevelop a housing estate was held to have acted unlawfully when it stopped consulting with the residents about the alternative of refurbishment. The Objectors submit that this judgement is relevant to the application of paragraphs 109 and 113 of the new Guidance. Paragraph 113 comes within Section 5 of the Guidance which concerns CPO powers in relation to the Housing Act 1985. Paragraph 109 of the same section explains that where land is assembled under planning powers for housing development the Secretary of State will have regard to the policies within Section 5.
412. Paragraph 113 of the new Guidance states that before a local authority can dispose of housing occupied by secure tenants to a private landlord it must consult the tenants in accordance with section 106A of the Housing Act 1985. In the case of the FDS the Acquiring Authority is not proposing to transfer any tenancies to a private landlord. It is providing tenants with the option of transferring to either an alternative Council property or a NHHT property. At the present time there is one secure tenant remaining on the Order Land and they have accepted the offer of an alternative property.<sup>[111]</sup>
413. In the case of the Aylesbury Estate the decision to depart from the previous aim of refurbishment was taken more than 10 years ago. The principle of demolition was considered as part of the AAAP strategy and the Core Strategy. It has also been subject to consultation in respect of the recent planning applications. Whilst I am not a lawyer, and it will be for the Secretary of State to consider this point himself, in my view this case is not comparable with *Bokrosova*. The tenants have been relocated and it is not intended to dispose of any tenanted properties. Moreover, the tenanted properties were within the Council's ownership and were not acquired by way of CPO. I therefore do not consider that there is any conflict between the CPO and paragraph 113 of the Guidance.



414. It is suggested that the failure to hold a ballot in accordance with Schedule 3A Housing Act 1985 in relation to the demolition is unlawful. It would seem that this requirement relates to a transfer of tenancy which, for the reasons given above is not proposed.

**Whether there is a compelling case in the public interest**

415. The principle of the scheme which includes the demolition of the estate is in accordance with the adopted planning framework. Whilst there would be a reduction in the proportion of social rented housing, the overall scheme would deliver a mixed community in accordance with the adopted planning framework which includes not only the AAAP but also the Core Strategy and the London Plan. I am satisfied that the scheme is deliverable and that Ellison House is unlikely to prevent its implementation.

416. The proposal would contribute to the economic and social well-being of the estate and the wider area insofar as it would deliver additional housing and increase spending in the locality. It would also provide housing for the elderly and people with learning difficulties. However, the scheme would involve about 50% of the existing residents being rehoused away from the existing estate, albeit within social housing owned by either the London Borough of Southwark or a registered social landlord. Environmentally the scheme would deliver benefits in terms of an improved street level environment, and sustainably built dwellings with a considerably longer life expectancy than the existing dwellings on the estate.

417. These benefits need to be balanced against the deficiencies of the scheme in terms of the number of dwellings that fail to meet the Council's adopted standards for sunlight and daylight, and the extent of overshadowing to the proposed amenity areas. These shortcomings are to a large extent the function of the height of the development proposed on the Albany Road frontage which conflict with the Masterplan, the principles set out in the AAAP and the Council's adopted standards. In this regard the scheme conflicts not only with the Council's adopted standards, but also with Section 7 of the NPPF which states that sustainable development is indivisible from good planning, and should contribute positively to making places better for people.

418. Whilst refurbishment would deliver some of the benefits of the scheme, on the basis of the evidence submitted to the inquiry, I am not convinced that such a scheme is viable and deliverable. Furthermore it would be unlikely to deliver a comparable increase in the number of dwellings. Therefore the current scheme is the only option before the Secretary of State at the present time that has the potential to regenerate the estate.

419. Paragraph 12 of the Guidance states that 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. It requires particular consideration to be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights (ECHR) and, in the case of a dwelling, Article 8 of the Convention.

420. Confirmation of the Order would interfere with the rights of the Objectors under ECHR in respect of Article 8 and Article 1 of the First Protocol. Article 8 sets out the right to respect for private and family life, home and

correspondence. Article 1 states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. These are proportionate rights and any interference must be balanced against the public interest.

421. The Objectors would be compensated for their properties. In addition, the range of housing opportunities put forward by the Acquiring Authority would enable them to stay within the area. However, in order to exercise this option they would need to invest considerable personal resources in addition to any compensation they would receive for their properties. In this regard the CPO would not only deprive them of their dwelling but also their financial security. If they chose not to pursue this option, they would inevitably need to leave the area and this would have implications for their family life, including the lives of those dependant on them.
422. These considerations, together with the failure of the scheme to fully achieve the social, economic and environmental well-being sought, I consider that the interference with human rights would not be proportionate having regard to the level of interference and the public benefits that the scheme would bring.
423. I therefore conclude that a compelling case in the public interest has not been proved.

**RECOMMENDATION**

424. I recommend that the Order be not confirmed.

*Lesley Coffey*

INSPECTOR

## **APPEARANCES**

### FOR THE ACQUIRING AUTHORITY:

Melissa Murphy	Of Counsel Instructed by Doreen Forrester-Brown, Director of Legal Services
She called	
Neil Kirby	Head of Regeneration South
Mark Maginn	Social Homebuy Manager
Jacqueline Fearon	Aylesbury & Walworth Manager
Catherine Bates	Principal Design and Technical Officer
Alison Squires	Planning Team Leader
Rosemary Houseman	Director of Regeneration Notting Hill Housing Trust

### FOR THE STATUTORY OBJECTORS TO THE ORDER

Christopher Jacobs	Of Counsel (13-15 October Only)
Rastko Novakovic	35% Campaign
Judi Bos	
S Agnes Kabuto	
Leslie Kerrigan	
Gillian Mutch	
Beverley Robinson	
Julius Sangbey	
Dr Ben Campkin	
Dr Catherine Crawford	
Professor Jane Rendell	
Toby Eckersley	
Professor Loretta Lees	

### NON QUALIFYING OBJECTORS TO THE ORDER

Paul Palley

### OTHER OBJECTORS

Victoria Briden  
Joy Nyack-Binns  
Karen Conelly  
Piers Corbyn  
Mr & Mrs Sisman  
David Cross  
Laura Fudge  
Gerlinde Gniewosz

**CORE DOCUMENTS**

CD1	Cabinet Report & Minutes (agenda item 17) 18 March 2014 (re-making of CPO)
CD2	AAAP
CD3	AAAP Inspector's Report 2009
CD4	Redacted Development Partnership Agreement
CD5	Location Plan
CD5A	Land Registry plan showing open space land Advert or placed in OJEU
CD7	Cabinet Report & Minutes (agenda item 9) 28 January 2014 (selection of development partner)
CD8	Executive Report & Minutes (agenda item 7) 27 September 2005 (Aylesbury Estate Revised Strategy)
CD9	GLA Press Release
CD10	Executive Report & Minutes (agenda item 15) 9 February 2010 Aylesbury Estate Phase 1 CPO
CD11	Site 7 Order, CPO Inspector's Report And Decision Letter
CD12	The Statement Of Community Involvement
CD13	Executive Report & Minutes (agenda item 14) 26 September 2006 (Rehousing Tenants and Homeowners Aylesbury Estate)
CD14	Cabinet Report & Minutes (agenda item 9) 14 December 2010(Amending Rehousing policy for Aylesbury Estate Homeowners)
CD15	Cabinet Report & Minutes (agenda item 16) 18 March 2014 (Shared Equity for homeowners affected by regeneration)
CD16	Homeowners guide to choosing new home
CD17	Map showing location of NHHT Edmund Street dwellings
CD18	Your Move - A Guide To Help You Choose A New Home
CD19	Design & Access Addendum
CD20	AAAP Phasing Plan
CD21	Core Strategy April 2011
CD22	The London Plan July 2011
CD23	Southwark Plan Saved Policies (April 2013)
CD24	Residential Design Standards SPD (October 2011)
CD25	Aylesbury Estate Regeneration – Structural Robustness of 5&6 storey Blocks (November 2004)
CD26	Paul Palley Objection to CPO
CD27	Council Statement of Reasons
CD28	Council Statement Of Case
CD29	Proofs of evidence from the inquiry into Site 7 CPO
CD30	Circular 06/2004 Compulsory Purchase and the Crichel Down Rules
CD31	Development Partnership Agreement Business Plan (extracts)
CD32	Cabinet Report & Minutes (agenda item 12) 17 March 2015 (Aylesbury Regeneration Programme Update)
CD33	National Planning Policy Framework 2012
CD34	National Planning Practice Guidance (extracts)
CD35	Draft Affordable Housing SPD 2011
CD36	Mayoral Community Infrastructure Levy SPG 2012
CD37	Mayoral Housing SPG 2012 (extracts)
CD38	London Plan Spatial Development Strategy for London Plan

	consolidated with alterations since 2011 (March 2015)
CD39	Southwark section 106 obligations/community infrastructure Levy SPD 2015
CD40	Planning application drawings revised
CD41	Planning application Environmental Statement plus addendum
CD42	Planning application Landscape Statement plus addendum
CD43	Planning application Outline Scheme Design And Access Statement plus addendum
CD44	Planning application outline Scheme Landscape Statement plus addendum
CD45	Planning application Revised Affordable Housing Statement
CD46	Planning application Planning Statement
CD47	Southwark Statement Of Community Involvement
CD48	Southwark Community Infrastructure Levy
CD49	Energy Statement

### ***Council's Proofs Of Evidence Update Statement & Rebuttal Statement***

Neil Kirby	Summary & Proof
Mark Maginn	Summary & Proof
Jacqueline Fearon	Summary & Proof
Catherine Bates	Summary & Proof
Alison Squires	Summary & Proof
Rosemary Houseman	Summary & Proof

Council's Update Statement with Appendices:

US1	DPA table of redactions
US2	DPA with redactions
US3	DPA Deed of Variation
US4	Chronology and Summary of Decisions
US5	Table from Conisbee Report
US6	Comparative Table of Reports
US7	S106 Agreement
US8	Letter to Ministry of Justice dated 17 August 2015
US9	Letter from Ministry of Justice dated 17 September 2015

Council's Rebuttal Statement with Appendices:

RS1	Record Surplus will help create new homes NHHT
RS2	Sustainability Appraisal Appendix
RS3	AAAP Equalities Impact Assessment

Addendum Statement in relation to new CPO Guidance

**Objectors' Submissions, Witness Statements & Updated Statement of Case**

Aylesbury Leaseholders Group Statement of Case  
 Witness Statement Judi Bos  
 Witness Statement Jazmine Bos  
 Witness Statement Gillian Mutch  
 Witness Statement Julius Sangbey (Inquiry Doc3)  
 Witness Statement Agnes Kabuto  
 Witness Statement Beverley Robinson  
 Witness Statement Leslie Kerrigan  
 Witness Statement Catherine Crawford  
 Witness Statement Prof. Jane Rendell  
 Witness Statement Dr Ben Campkin (Inquiry Doc15)  
 Witness Statement Prof. Loretta Lees (Inquiry Doc21)  
 Witness Statement Victoria Briden

**Aylesbury Leaseholders Updated Statement of Case with Appendices:**

ALG1	Updated case statement
ALG2	Witness statement of Beverley Robinson 22 Sept 2015
ALG3	Witness statement of Agnes Kabuto 22 Sept 2015
ALG4	Witness statement of Judi Bos 22 Sept 2015
ALG5	Witness statement of Julius Sangbey 22 Sept 2015
ALG6	Guardian Article "Affordable Housing Does Not Mean What You Think it Means" (Colin Wiles, Feb 2014)
ALG7	Full Section 106 Agreement for the Aylesbury Redevelopment (annotated)
ALG8	35% Campaign letter to Cllr Williams re: S106 agreement
ALG9	35% Campaign letter to Notting Hill re: request for info on rent levels
ALG10	Section 20 invoice setting out costs of major works charges for Decent Homes Standards works (WDS) to 611 homes on phase 4 of the scheme
ALG11	July 2015 Affordable Rent Study showing social & market rents for SE17
ALG12	FT Article "Councils slash housebuilding as Osborne rent cut bites" - 15 Sep 2015
ALG13	Southwark Cabinet report "Early activation of 57-76 Northchurch" Feb 2015 (Notting Hill's consultation response to the governments Social Housing Reform proposals Sep 2011
ALG14	Guardian Article referenced in 35% letter "Tenants Hit by £50m rent rise" - 29 March 2015
ALG15	Foreword to CSJ report by Notting Hill CEO Kate Davies - Nov 2008
ALG16	Report "Refurbishment/Demolition of Social Housing" - UCL Engineering Exchange Oct 2014
ALG17	GLA report "Knock it down, do it up?" Feb 2015
ALG18	Sustainability Appraisal of Aylesbury Area Action Plan May 2009

ALG19	FT Article "Housing Associations may carry the can for Tories' Right to Buy plan" 13 May 2015
ALG20	Aylesbury Tenants and Leaseholders First, Southwark Council – Stop Demolishing the Aylesbury Estate
ALG21	Income/Expenditure Forms Guidance Notes
ALG22	Letter to Beverley Robinson 11 Sept 2015
ALG23	Funding Prospectus, The Mayor's Housing Covenant 2015-2018 Programme
ALG24	Updated witness statement of Jane Rendell
ALG25	Response to the Council's Statement from Judi Bos

### ***Aylesbury Leaseholders Core Documents***

OCD1	Extract LBS Affordable Rent Study December 2014
OCD2	S106 Agreement Aylesbury Phase 2 Site 7
OCD3	Inside Housing Article March 2015
OCD4	Dash Housing News Article 25 November 2010
OCD5	LBS Representations regarding early minor alteration to the London Plan
OCD6	S106 Agreement Bermondsey Spa
OCD7	Bermondsey Spa Committee Report December 2010
OCD8	Aylesbury Estate Housing Tenure Table
OCD9	Elmington Estate Phase 3 Equality Analysis
OCD10	HCA Regulatory Framework for Social Housing in England from April 2012 Annex A
OCD11	Heygate Estate s106 Agreement
OCD12	Creation Trust Survey on AAP Consultation
OCD13	Heygate Estate Decant Arrangements
OCD14	Heygate Estate Shared ownership price list March 2015
OCD15	Aylesbury NDC Draft Equalities and Strategy Plan 2003
OCD16	Aylesbury NDC Draft Equalities and Strategy Plan
OCD17	Letter from Aylesbury NDC to Harriet Haman MP October 2003
OCD18	Government Office for London Scoping Study on Aylesbury NDC December 2003
OCD19	Executive Committee Report Annex A in relation to cost of refurbishment
OCD20	Executive Committee Report Annex B
OCD21	Executive Committee Report Annex C
OCD22	Executive Committee Report Annex D
OCD23	Cabinet report – Selection of Preferred Development Partner January 2014
OCD24	Creation Trust Board Minutes September 2011
OCD25	Aylesbury Estate –Warm, Dry & Safe Newsletter November 2014
OCD26	Mayor's comment on Independent Valuation South London Press January 2015
OCD27	Handbook for Assessment of Large Panel Blocks for Accidental Loading
OCD28	Six Acres Estate Refurbishment Illustrations

OCD29	Summary Overview of the Development Partnership Agreement at the Aylesbury Estate Southwark
OCD30	Risk Assessment of the Development Partnership Agreement at the Aylesbury Estate Southwark
OCD31	Risk Assessment of the Development Partnership Agreement at the Location of Red Brick Dwellings on Estate
OCD32	Inside Housing Article in relation to Housing Association Margins March 2015

Further Submissions in relation to CPO Guidance

### **DOCUMENTS TABLED AT THE INQUIRY**

(Documents 45 – 64 submitted 13- 15 October 2015)

1	List of Acquiring Authority Witnesses
2	Witness statement from Mr & Mrs Sisman
3	Witness statement submitted by Julius Sangbey
4	Aylesbury Leaseholders Group Deputation to Cabinet (Nov 2014) submitted by Qualifying Objectors
5	Corrections and Updates Submitted by the Council
6	Appendices to Objectors' statement
7	Local Planning Authority Opening Submissions
8	Mr Palley's Statement (most recent version)
9	Background Documents to Aylesbury Area Action Plan submitted by the Council ( <b>a bundle</b> )
10	List of Rosemary Houseman's Appendices submitted by the Council
11	Email dated 25 April 2015 from Beverley Robinson
12	DPA Business Plan sections ( <b>a bundle</b> )
13	Formalities bundle submitted by the Council
14	Opening submissions on behalf of Objectors submitted by Rastko Novakovic
15	Dr Ben Campkin Proof of Evidence
16	Draft Minutes Planning Committee 23 April 2015 submitted by the Council



17	Existing and proposed housing numbers submitted by the Council
18	Extract from Design and Access Statement in respect of Plot 7 submitted by the Council
19	Extract from Consultation Report for the Aylesbury Area Action Plan submitted by the Council
20	Email dated 28 April 2015 from Patrick McGreal submitted by the Council
21	Witness statement Professor Loretta Lees
22	Levitt Bernstein Report (2005) Executive summary submitted by the Council
23	Robustness considerations to inform Risk Assessments (2005) submitted by the Council
24	Extract from London Plan submitted by the Council
25	Letter dated 15 July 2014 in response to inquiries from Gillian Mutch submitted by the Council
26	Table comparing floorspace standards with DCLG space standards submitted by the Council
27	Letter dated 13 February 2015 to Richard John Clarke Chartered Surveyors submitted by Judi Bos
28	Deputation request from Aylesbury Decant Sub-Group Committee report (Sept 2006) submitted by Judi Bos
29	Statement from Joy Nyack-Binns
30	Note on Affordable Rent submitted by the Council
31	Skeletal Submission on behalf of Aylesbury Leaseholders Group submitted by Toby Eckersley
32	Section 106 procedure note submitted by the Council
33	Objectors' reply to Southwark Note : Affordable Rent submitted by Objectors
34	Letter dated 1 May 2015 and draft memorandum of understanding re Ellison House submitted by the Council
35	Deed of release of restrictive covenant between Southwark and Bromley submitted by the Council
36	Written submissions by Piers Corbyn
37	Gerlinde Gniewosz Submissions
38	Table 10 Conisbee Report submitted by the Council

39	Email dated 11 May from Paul Palley
40	Email dated 14 September from Paul Palley
41	Legal Authorities Bundle ( <b>a bundle</b> )
42	Further statement dated 11 May 2015 plus homebuyers feedback questionnaire submitted by Judi Bos
43	Points for inclusion in the Objectors' written submissions for public inquiry plus correspondence submitted by Beverley Robinson
44	Plan showing outline and FDS areas submitted by the Council
45	Missing page (9 of 49) from the July Affordable Rent Study submitted by Objectors
46	Notting Hill Housing Trust - Revised Affordable Housing Statement February 2015 submitted by Objectors
47	Notting Hill Housing Trust table of anticipated rents submitted by Objectors
48	Levitt Bernstein report submitted by Objectors
49	Frost Associates report submitted by Objectors
50	Notting Hill Housing Trust Financial statements 2014-2015 submitted by Objectors
51	Judi Bos Reponse to the Council's Rebuttal submitted by Objectors
52	Islington LBC Report on Churnfield House/Six Acres Estate submitted by Objectors
53	<i>R (oao Baker) v First Secretary of State</i> [2003] EWHC 2511 (Admin) submitted by Objectors
54	<i>Eckersley v Secretary of State for the Environment and another</i> (1977) 34 P&CR 12 submitted by Objectors
55	Index of appendices to Council's update statement submitted by the Council
56	Index of appendices to Council's rebuttal statement submitted by the Council
57	Objectors' closing statement submitted by the Objectors
58	<i>R v Mendip District Council, ex parte Fabre</i> (2000) 80 P&CR 500 submitted by the Council
59	<i>Pascoe v Secretary of State for Communities and Local Government</i> [2009] EWHC 881 submitted by the Council
60	<i>R (on the application of East Hertfordshire)</i> (1991) 23 HLR 26 submitted

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	by the Council
61	<i>R(Clays Lane Housing Cooperative) v The Housing Corporation</i> [2004] EWCA 1658
62	Deed of Clarification dated 14 October 2015 made between The Mayor and Burgesses of the London Borough of Southwark and Notting Hill Housing Trust submitted by the Council
63	Further note from Judi Bos submitted by Objectors
64	Council's closing submissions
65	Council's legal submissions note