IN THE FIRST TIER TRIBUNAL

(INFORMATION RIGHTS)

BETWEEN

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK

Appellant

and

(1) THE INFORMATION COMMISSIONER'S OFFICE

(2) LEND LEASE (ELEPHANT AND CASTLE) LIMITED

(3) MR A GLASSPOOL

Respondents

WITNESS STATEMENT OF JONATHAN ABBOTT

I, Jonathan Abbott of 160 Tooley Street, London SE1 2QH say as follows:

1. I make this statement in support of the appeal by Southwark Council against the Decision Notice issued by the Information Commissioner's Office with reference DN FER0461281. I am duly authorised by the Council to do so.

A. Introduction

2. In this witness statement I explain the history of the regeneration project at the Heygate site in Elephant & Castle, London SE1, and the importance of the success of the scheme from a public interest perspective, and from the point of view of the Council's economic interests. I have worked on the project since its inception and have been the Project Director since 2007.

3. I will also explain the meaning of the term "affordable housing" and the sub-types within that. I will set out the amount and types of affordable housing which will be delivered in the new development and surrounding area, and the discussions with residents on the Council's rehousing strategy.

4. I will explain the compulsory purchase process which the Council entered into and the public involvement with and scrutiny of the proposals through that process.

5. I will also briefly summarise the Council's process for ensuring that it obtained "best value" for the land.

6. Finally I will correct some erroneous comments made in the "Spinwatch" article referred to by the Information Commissioner in the Decision Notice.

B. History of the regeneration project

7. I would like to draw the Tribunal's attention to my proof of evidence for the Heygate Compulsory Purchase Order (referred to in section D below) ("my Proof"). A copy appears at [Open Bundle Tab F1 pages 331-370]. This contains information on the history of the project from its inception in 1997 and sets out the Council's case in support of the regeneration.

8. The Heygate Estate was completed in 1974. The Estate and the surrounding area has great potential, in view of its central location and good transport links. However it suffers from a number of difficulties. It contains a large proportion of social housing which would have required very significant investment to bring it up to current standards, traffic is congested and air pollution high, and the area is deficient in key local amenities such as public open space. The residents experienced relatively high levels of deprivation and social exclusion.

9. The main Heygate Estate comprised 1,107 residential flats and maisonettes, and a further 105 were located in a smaller site to the East of Rodney Road, making a total of 1,212 units. Most of the units were owned by the Council and let to secure tenants, but long leases of 179 properties were sold under the "Right to Buy" scheme (the owners, who included Mr Glasspool, are referred to as "leaseholders"). This left 1,033 social rented properties occupied by Council tenants in the Heygate Estate and Rodney Road sites.

10. The main Estate is laid out with 12 storey-high blocks of flats encircling low rise blocks of maisonettes. The blocks are linked by concrete bridges. The layout of the site rendered the Estate insular and intimidating, created problems for

residents in a lack of defensible space, privacy and security, and was not an effective use of the space.

11. The origins of the Council's decision to pursue a wider programme of regeneration at the E&C go back to 1997. At that time the Council, in its role as landlord, was formulating a strategy (known as the Southwark Estates Initiative (SEI)) for investment to regenerate its housing stock across the Borough as a whole. At the time Southwark was responsible for the management and maintenance of around 50,000 units, making it one of the largest social landlords in the country. The resources required to address the investment needs of the stock were substantial and well beyond those available to the Council, and this required innovative approaches to address needs. The context for SEI had been established by the 1998-2005 Southwark Housing Strategy which had as its strategic aim "to provide quality services and quality homes, maximising choice and affordability for Southwark residents and to build sustainable, inclusive communities. This will result in the Council owning a smaller and higher quality housing stock ".[1] The future of the Heygate Estate was being considered as part of this Borough-wide initiative but the options for the Estate needed to be carried out in parallel with the development proposals for the whole Elephant and Castle area.

12. By 1998 the Heygate blocks were suffering a number of forms of disrepair including cracking, damp and flooding, and there were structural risks arising from moisture ingress and the use of asbestos panelling in construction. The Council's Housing Department appointed Allot and Lomax to undertake an Options Appraisal (extracts appear at Open Bundle Tab F1 pages 423-432) as part of the wider SEI. Allot and Lomax noted that there were a number of inherent design and construction defects, and advised that the buildings were in need of complete refurbishment.

13. As I stated in paragraph 3.8 of my Proof, the option of partial demolition and refurbishment was preferred by Allot and Lomax, but they advised that "much

[1] Housing Committee report dated December 1998 paragraph 3.6.1, at [Open Bundle Tab F1 pages 330A – 345A].

work [was] needed to develop it further before it [could] be seen as a firm proposal". The December 1998 Housing Committee report noted that this option "may not create sites that can be redeveloped in the most beneficial way" (paragraph 4.3.3). The option would have done nothing to address the site's poor connectivity to adjoining neighbourhoods, diversify the mix of uses and tenures necessary to achieve a sustainable town centre, or make efficient use of the land to deliver new homes and jobs. Further Allot and Lomax noted that demolition and redevelopment would allow the Council to realise the value of the land and act as a focus for the wider regeneration of the area, making this a potentially attractive option. It is therefore not correct to state, as Mr Glasspool does at paragraph 4 of his Response, that the Council decided to demolish the existing buildings against the advice of Allot and Lomax.

14. The wider strategy for the regeneration of the Elephant and Castle was also developing during this period. In order to carry out the full-scale overhaul of the area which the Council was seeking, it needed to identify a private sector partner. The reasons for this are set out in paragraph 5.2 of my Proof but primarily these centred around the need to secure funding and a strategy which would give the scheme the best prospect of success.

15. In 2000 the Council issued a competitive tender for a private sector development partner: Southwark Land Regeneration PLC (SLR) was selected in early 2001. However in March 2002 the project suffered a major setback as the Council and SLR were unable to reach an agreement on a commercial structure which reflected the parties' respective risks and rewards. As a consequence in the Council's view the deal on offer at the time substantially undervalued the Council's land holding.

16. Mr Glasspool has asserted in paragraph 5 of his Response that community representatives were excluded from talks and denied access to the draft heads of terms for the regeneration agreement. However residents were consulted where their interests were affected and their opinions were taken into account in the consultation process to select a preferred commercial partner. The terms for the contractual agreement were properly a matter for elected Councillors to determine and for their officers to advise on.

17. Mr Glasspool has also alleged at paragraph 6 of his Response that the plans fell through because the Council was opposed to the proposal to create a community land trust: this is simply not true, and unfounded press speculation. (There is also no basis for comparing the proposal from SLR with the current agreement with Lend Lease, as Mr Glasspool does at paragraph 16 of his Response. The two schemes were fundamentally different in content and scope and were developed in very different circumstances. The Council in any case did not accept SLR's offer as it not meet its valuation for the Heygate land. The basis of the £250m figure for social infrastructure was not accepted as realistic by the Council.)

18. Later in 2002 the Council re-launched the initiative and over the next three years carried out detailed project planning work, which included further surveys and expert analysis of the wider Elephant and Castle area including the Heygate estate. This resulted in 2004 in the adoption of the Elephant and Castle Supplementary Planning Guidance (SPG) which included proposals to demolish the Heygate Estate and redevelop it and other key sites with a core area to create a new mixed use town centre. The SPG also identified a number of "satellite" sites for the provision of replacement homes to meet the needs of Heygate residents who would have to be re-housed to allow the plan to proceed.

19. In 2005 the Council carried out a public procurement process for the selection of the main partner for the redevelopment.

20. Following the conclusion of the European tender process, and detailed negotiations, Lend Lease was selected as the Council's commercial development partner in July 2007. The Council and Lend Lease then started to negotiate the terms of the Regeneration Agreement: this was set back by the worldwide downturn in 2008, but in July 2010 the Regeneration Agreement was signed.

21. As can be seen, by this time the Council had been seeking to get regeneration under way for more than 10 years. Over that period the need for the work had become more acute, as described further in paragraph 45 below.

22. Lend Lease is a global development services business with a strong track record of delivering high density mixed use development, with associated transport and infrastructure networks.

23. The Regeneration Agreement provides for the sale by the Council of a long lease in the land to Lend Lease plus a share of the profits from the development. In addition Lend Lease will take full responsibility for the complete regeneration of the site. In negotiating the sale price for the lease the Council relied upon valuation advice from Drivers Jonas Deloitte, property consultants, and brought the proposal to the attention of its own auditors.

24. The development will double the number of homes currently on the site, to a maximum of 2,469, as against the total of 1,212 on the main Estate and the Rodney Road site. In addition the Council has a right to share in the profits from the development if they exceed an agreed level. While the land payment and profit share is a significant financial benefit, in my view there are other social, economic and environmental benefits which should also be taken into account when reaching a conclusion about the overall value of the public benefits of the scheme for Southwark. I have summarised these in part 6 of my Proof and in section E below. The Council will receive the guaranteed payment for the long leasehold, and the value of the section 106 planning obligations, including the provision of affordable housing, and this is before the calculation of the overage due to the Council as a consequence of the profit share arrangements.

25. The Council has invested over £50 million in its project to regenerate the Elephant and Castle area, including about £32 million on the acquisition of third party interests and about £18 million on forward funding of demolition, although the latter sum will be repaid by Lend Lease with interest, as explained further below.

C. Replacement of affordable housing on the Heygate Estate

Provision of affordable housing

26. The Council is required to assess and provide for the housing needs of all its residents, including those whose financial circumstances mean that they cannot

afford properties made available at market rates. The Council does this in three main ways.

27. The first is direct provision: the Council already owns the greatest number of homes of all the London boroughs (about 39,000), and has begun the process of delivering 1,000 new Council-owned homes by 2020, as well as committing to providing a further 10,000 homes over the next 20 to 30 years.

28. The second means of provision is by encouraging "registered providers" of social housing to bring forward schemes for new affordable homes.

29. The third means is the one at issue in this case, namely the imposition of obligations as a condition of planning permission for the provision of affordable homes within the proposed scheme.

Types of affordable housing

30. At the time that the Council began to consider regeneration of the Estate, there were only two types of "affordable housing": the first was "social rented" properties, which are owned by the Council and "registered providers" of social housing, and typically let at around 40% of local market rents (these are also sometimes referred to as "target rents"). The second was "intermediate" housing, which can take a number of forms, including shared ownership.

31. These two types are still in use, but in 2011 a third category of affordable housing was introduced, termed "affordable rented" accommodation. This is intended to be let by Councils and "registered providers" to households eligible for social housing. It can be let at levels up to 80% of market rent. This type of housing is more attractive to developers than social rented homes, as the potential revenues are greater. However the Council is mindful of the fact that rents at or near 80% of market rents are likely to be beyond the reach of most local households who are eligible for social housing, and therefore it seeks to negotiate lower levels of rent through the planning process.

32. In addition to this policy change the Government has also very significantly reduced the grant funding available to support RSL projects and its policy is that

section 106 schemes involving the provision of affordable housing are not eligible for grant.

Delivery of affordable homes to replace properties on the Heygate Estate

33. The Council formally agreed to cease lettings on the Estate in early 2001.

34. In February 2003 the Council's Executive considered and approved a report recommending that the 1,033 socially rented homes on the Estate and at Rodney Road be replaced in three phases: first through the development of affordable housing on Council-owned sites in partnership with Registered Social Landlords (as registered providers were then called); secondly on privately owned sites in the form of affordable housing secured through planning agreements; and thirdly through the provision of new affordable homes on the redeveloped site. The first phase was referred to as "Early Housing" sites. In June 2003 the Council reaffirmed its commitment to replace the social housing capacity of the estate.

35. In 2004 and 2005 the Council ran a procurement process to identify Registered Social Landlords to build and run replacement affordable homes on Council-owned land.

36. Since 2005, 536 units of new affordable housing close to the Estate have been built or approved on Council-owned land. A plan showing the location of these "Early Housing" homes appears at [Open Bundle Tab F1 page 433]. The overwhelming majority, 419, are social rented homes.

37. In addition, 520 affordable homes have been built on private developments in the area, of which 258 are social rented homes. Therefore the Council is making good progress towards delivering the number of social rented homes which will be needed to replace the social rented homes in the Heygate Estate (1,033), as the total provision is 677 so far. In addition the total number of new affordable homes (1,056) has already exceeded the total number of social rented homes on the Heygate Estate (1,033).

38. In addition to the 1,056 new affordable homes already provided in the surrounding area, the redevelopment of the main Estate and the Rodney Road

site will deliver a minimum of 587 affordable housing units, as set out in the table below.

	Main Estate	Rodney Road	Total
Up to 40% market rent (social rented)	71	8	79
Up to 50% market rent (affordable rent)	194	18	212
Total rented	265	26	291
Shared ownership	268	28	296
Total affordable housing	533	54	587

The final numbers will be dependent on detailed planning consents, but the scheme has the capacity to provide up to 617 affordable homes (i.e. 25% of 2,469 homes permitted by the outline planning permission). Therefore the total of new affordable homes in the area will be at least 1,643 -1,673. Again this can be compared to the total of 1,212 homes formerly provided on the old Estate and at Rodney Road, of which 1,033 were social rented and 179 privately owned. It is simply not correct to say, as the ICO does at paragraph 78 of the Decision Notice, that there is a shortfall in the planned provision of affordable housing. In fact, once the Heygate redevelopment has been completed, the provision of affordable housing in the Elephant and Castle area will be much greater than it was before.

Consultation with Heygate tenants and leaseholders, and re-housing

39. In 1998 the Council conducted a postcard survey in which 80% of 500 respondents favoured major regeneration of the Elephant and Castle area.

40. The Council is aware of the MORI poll opinion survey April 1999 referred to in paragraph 4 of Mr Glasspool's Response. This market research was commissioned jointly by the Council's Housing Department and the Heygate

Tenants and Residents Association during 1999. This was at a time when the Council was considering whether the future of the Heygate should be considered as part of the Southwark Estates Initiative or as part of a wider regeneration plan for the area. A copy of the report appears at [Tab F1 pages 435-449]. As can be seen, about a third of respondents preferred demolition, a similar proportion preferred repairs and improvements, and a quarter preferred partial demolition. The MORI report summary noted that at that stage there was "no clear consensus on which of the options for future development should be pursued."

41. Mr Glasspool has alleged in his Response (paragraph 3) that the Council broke a promise to allow residents a ballot on the future of the Estate. This is not correct. The possibility of a ballot was discussed, but there was no formal Council resolution in support of this. The Council's consultation took the form of exhibitions, one to one meetings with tenants and leaseholders to discuss their particular housing concerns, and the use of independent market research to test opinion about proposals.

42. The impacts of regeneration proposals on Heygate residents are very often specific to the circumstances of individual households. As a consequence residents understandably will often require detailed discussions on a confidential basis so they can fully understand the implications that the available options may have for their individual financial and personal circumstances. The Council formed a dedicated team of officers who worked on the Estate from 2002 to carry out this work. The resulting exhibitions and findings from the consultation process showed that once this information was provided that there was strong support for the Council's proposals.

43. Research firm Marketlink carried out a survey of residents on behalf of the Council during the Autumn of 2002 [Open Bundle Tab F1 pages 451 – 457]. This revealed a number of serious problems being experienced by residents of the estate, primarily dilapidation, crime and the fear of crime.

44. Following on from the Allot and Lomax Options Appraisal the Council developed its proposals in more detail and Marketlink carried out further consultation with

residents on behalf of the Council in the Summer of 2003 [Open Bundle Tab F1 pages 459 – 465]. With the benefit of more information about the Council's re-housing offer and plans the responses were more positive and supportive of the approach that has been taken by the Council (see also paragraph 5.10 of my Proof).

45. In February 2007 the Council took the decision to accelerate the rehousing programme for the tenants on the Estate (Mr Glasspool refers to this in paragraph 8 of his Response). This was following a public report to the Council Executive, prepared in response to concerns from residents, which considered that the number of empty properties was creating potential for crime and anti-social behaviour, and that the fabric of parts of the estate had deteriorated to such an extent that the Council was finding it difficult to perform its obligations as Landlord [Open Bundle Tab F1 page 475-490]. The report was prompted in part by residents' concerns. I do not agree that the evidence supports Mr Glasspool's contention that the decision caused "much upset amongst residents" (Glasspool Response paragraph 9). It would be surprising if a decision of this nature did not result in opposition from some residents, but this was not a majority view at that time and this is borne out by the subsequent rehousing process which I summarise below.

46. Mr Glasspool has referred to the tenants of the Heygate Estate being "decanted" into existing stock, at paragraph 10 of his Response, but this gives a misleading impression that tenants were passive participants in a process over which they had little or no influence. This was not the case. In 2007 the Council introduced a choice-based lettings system which provides tenants with an opportunity to bid for Council property which is being re-let, as well as new build housing association rented properties which were being developed across the borough and were ready for occupation. All Southwark tenants can bid for properties that become available. Tenants wishing to bid are given a ranking which is based on their housing need. Residents in regeneration schemes such as those on the Heygate were given the highest ranking (1). This placed them in the optimum position to bid for available properties. The vast majority of tenants participated

actively in this process to such an extent that within a period of 18 months a large number had moved from the Estate.

47. Inevitably there were some tenants who did not participate in this process, or failed to accept properties offered to them following the bidding process or direct offers made by the Council. The Council sought to make contact with these tenants in writing and by visiting their properties. In some cases the Council had no option but to make formal offers to them. However the Council only needed to take formal legal action in relation to eight homes: of these cases, four were settled and only four required eviction.

48. Further, tenants leaving the Estate after 2007 were offered a right to return to new affordable properties in the Elephant and Castle area at any time in the following 7 years. To date 250 tenants have accepted this offer and 45 have moved into a new home under that agreement.

49. Leaseholders who purchased their flats under the "Right to Buy" scheme were not offered this relocation option as the compensation paid to them for their property would allow purchase of alternative property. It is also not correct, as Mr Glasspool asserts at paragraph 23 of his Response, that the Council promised to provide home-buy assistance schemes in relation to new properties on the redeveloped estate. This would not have been practical as the Council intended to provide vacant possession of the site as a whole to its prospective partner prior to commencement of demolition and construction subject to Lend Lease first securing planning consent and discharging other obligations. As is often the case with development agreements, this requirement forms part of the Council's obligations under the terms of the Regeneration Agreement which was completed in 2010.

50. The Council undertook to investigate whether an option of shared equity arrangements could be provided, however this required agreement with third parties developing other sites as the Heygate development was many years away from commencement, let alone completion. The Council was able to secure 20 shared equity properties in the newly-built Strata tower just across the road from the old Estate. This was brought to the attention of all leaseholders at the

time including Mr Glasspool. In the end 6 leaseholders took up this offer but Mr Glasspool declined.

51. The Council also agreed that leaseholders could use the value from their leaseholder properties to part buy existing Council properties on other estates in the vicinity of the Elephant and Castle. This option was subject to an assessment of interested leaseholders' financial status. 5 leaseholders took up this option but again Mr Glasspool declined.

52. Finally the Council considered whether this type of arrangement could be extended to units developed on the Early Housing sites referred to at paragraphs 35-36 above. However this was never a commitment, and it was subject to viability and agreement with RSL partners. In the event the downturn in the property market resulted in the funding of the programme being significantly changed and as a consequence the schemes became predominantly rented accommodation, although there were a limited number of shared ownership units as well, as noted in paragraph 36 above.

53. There are many shared ownership units that have become available in the Elephant and Castle area and leaseholders would have been able to access these if that was an option which was financially attractive to them.

54. It is not correct to say, as Mr Glasspool does at paragraph 11 of his Response, that the Council declined to offer leaseholders the option of being re-housed as a tenant. This option is available, but again it is subject to an assessment of the financial circumstances of individual leaseholders. 13 former Heygate leaseholders have qualified for this option.

55. Save for 3 properties on the Estate, all Council tenants and home-owners had relocated by January 2013. Of the remaining three leasehold units, one of the flats was an unoccupied burned-out shell; the owner of the second owned another property and was mainly living there, so that eviction proceedings were not needed. Only Mr Glasspool refused to leave the Estate until the Council enforced its rights under the Compulsory Purchase Order (see paragraph 72 below).

D. The compulsory purchase process

56. As is often the case with development arrangements, the Council is required to deliver vacant possession of the Estate under the Regeneration Agreement. It therefore took steps to acquire all third party interests in the land: it was able to negotiate purchases of all such interests save in respect of three residential properties. Further the Council was working towards gaining possession of nine leased commercial premises and the freehold site occupied by the United Reformed Church. (The Council is collaborating with the Church to develop a new facility for them on a Council-owned site at the rear of the Strata tower. A professional team has been appointed to prepare a scheme for planning and the Council expects that this will be submitted for consent early this year. The programme anticipates a one year build commencing on site in Autumn 2014.)

57. The Council commenced a compulsory purchase process (CPO) in September 2012 with regard to these remaining interests. A number of objections were received, so that the Secretary of State for Communities and Local Government arranged a public inquiry, run by a Planning Inspector, to consider those objections. The purpose of the enquiry was to consider whether the CPO was fair and lawful, and whether there was a compelling case in the public interest for the third party interests to be acquired by the Council, so that the development could proceed. The merits of the proposed development, including the affordable housing provision, therefore had to be considered in detail.

58. The Council prepared and submitted detailed evidence and argument to demonstrate why the public interest was in the CPO being made, and the development proceeding. Copies of the Council's Statement of Case, my Proof of Evidence and that of my colleague Simon Bevan appear at [Open Bundle Tab F1 pages 331-422]. A number of other proofs were also submitted: copies can be found at this web address: http://www.southwark.gov.uk/downloads/download/3287/heygate_compulsory_purchase-core_documents_and_proofs_of_evidence_list.

59. A summary of Mr Glasspool's objections, and the Council's responses on each, appears at [Open Bundle Tab F1 pages 411-416].

60. In my Proof I explained the background to the scheme, the importance of it going ahead, and the delivery of affordable homes, among other things.

61. The public inquiry took place on 5 February 2013. Mr Glasspool and others asked detailed questions of myself and other Council officers in connection with the public interest arguments for and against the proposed scheme. Mr Rob Heasman of Lend Lease was also questioned in detail about the viability issue.

62. Following the report of the Inspector the decision to make the CPO was approved by the Secretary of State in July 2013 [Open Bundle Tab F1 pages 543-546] and the Order has now been issued and implemented by the Council, so that the Council now owns the freehold of the entire site.

63. Mr Glasspool refused to leave his property and was evicted by bailiffs on 6 November 2013.

64. Mr Glasspool has alleged at paragraph 14 of his Response that the Council has spent more on site assembly than it stands to receive under the Regeneration Agreement. Again this is not correct. Mr Glasspool has added the capital and revenue costs together to arrive at the £65 million figure. There would be a revenue cost for the Council whether the site was being developed or whether it was being maintained as an active housing estate. The point about the high revenue costs is that his continued occupation, and the risks associated with public access into a large and almost empty site, have been very costly for the public purse. Also the figure includes demolition costs of about £18 million which are to be repaid to the Council with interest. The actual investment to secure all the non-Council interests on the site is in reality about £32 million.

E. Public benefits of the proposed redevelopment

65. The proposed redevelopment is at the heart of the Elephant and Castle, but significant progress has already been made in improving the area, with substantial investment by Southwark Council and private developers. The southern roundabout system has been vastly simplified and dangerous pedestrian subways removed; the St Mary's Churchyard Park has been redeveloped; there have been four major residential developments; and a new leisure centre is scheduled to open in early 2015. The redevelopment of the

Heygate Estate is crucial to the transformation of the area, however. The Council has an interest, both as public authority and as a body with its own commercial interests in the area, in securing the regeneration of this key site.

66. Following redevelopment there will be a significant public space at the heart of the site which will be easily accessible from outside the development and form a focus for a revitalised local community. The design and mix of uses will allow for increased and varied activity throughout the day, and much greater access to the site from outside, which will encourage economic activity such as retail, business and leisure services (it is estimated that the new residential population and workers on the site will make an additional contribution of over £36 million per year to the local economy) [Open Bundle Tab F1 page 396]. The regeneration will also create employment opportunities for local people (estimated at up to 1,080 construction jobs and 1255 new jobs once the development is complete [Open Bundle Tab F1 page 396]). The more intensive use of the area will also reduce the fear of crime, and encourage pedestrian movement into and around the site.

67. Further, as noted above, the space will be used far more effectively, and the development will make an important contribution to the borough's targets for new housing, including for affordable housing, which would not have been possible through refurbishment of the existing buildings on the Estate[2].

68. In summary the proposed development will deliver a very significant contribution to the Council's core objective of developing a thriving and inclusive, mixed use and mixed tenure town centre at the Elephant and Castle based around a form of development which will connect the site to adjoining neighbourhoods and make efficient use of this highly accessible site.

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[2] Mr Glasspool has called it "offensive" that Lend Lease had specified a separate lobby and lift area for social housing (paragraph 19 of his Response) but separate cores for the affordable and private elements of a development is standard as "registered providers" require low service charges to ensure their housing is affordable.

69. The regeneration is also of enormous benefit to the people of Southwark through the proceeds of sale of the land and other income. The sale price for the long lease of the site will be directed towards the Council's housing investment programme, including fire safety improvements and the "warm, dry and safe" initiative.

70. Furthermore under the terms of the regeneration agreement the Council is entitled to a share of the profits made by Lend Lease from the development above an agreed level. In addition, the increased economic activity in the area will generate further income in the form of additional business rates, and the New Homes bonus. This additional revenue will help to fund essential public services, at a time when there is significant pressure on the Council's budgets.

71. In addition, the transport links in the area will be radically improved: Lend Lease is making a contribution of £13 million under the section 106 agreement towards improvements to local public transport including improvements to the Underground station and northern roundabout. In addition the £9 million Community Infrastructure Levy payable by Lend Lease to the GLA will fund further improvements to local public transport links.

72. The base budget for the funding of the transport improvements is from a combination of Transport for London (TFL) grant (£50 million) and developer contributions from the Elephant and Castle Opportunity Area under s106 agreements and the Community Infrastructure Levy (£48 million in total). Lend Lease's contribution towards the latter component of the budget is very significant and represents the largest single developer input. This contribution is scheduled to be paid over to TFL by 2019 and this commitment is crucial to TFL's budget planning.

73. A further and very important benefit of the scheme is that its success will build investor confidence and drive further improvements in the area. Several large development projects are currently planned for the immediate local area, including the Elephant and Castle shopping centre (which was acquired by Delancey/APG on 2 December 2013 for £80 million, demonstrating the growing private sector confidence in the area), the former London Park Hotel, a major site on Elephant Road, Eileen House on Newington Causeway, and the

redevelopment of the nearby Aylesbury estate. Much of this activity can be specifically attributed to the improved outlook for the area in light of the Heygate development.

F. Loss of public benefits if the development is compromised

74. Lend Lease has explained how disclosure of the disputed information would give third parties insights into its assumptions and expectations which would lead to it obtaining less advantageous terms in the various ongoing negotiations in this project. I believe that it is more likely than not that for the reasons which Lend Lease has given Lend Lease would suffer serious commercial prejudice if the information had to be disclosed, and that this would place further strain on the viability of the project. I agree with the ICO's conclusions at paragraphs 55 to 60 of the Decision Notice.

75. Lend Lease is entitled under the Regeneration Agreement to pull out of the project if it is not viable for it to continue, in Lend Lease's opinion. I understand that Lend Lease would be extremely reluctant to pull out, but if the disclosure of this information put Lend Lease in such a weak bargaining position that it was unable to continue, that would have catastrophic effects on the Council and the residents of Southwark.

76. If the agreement with Lend Lease fell through and the Council was unable to find another development partner, all of the public benefits expected from the development, explained in this statement and my Proof, would be lost. In my view delivery would certainly be severely delayed whilst the Council sought a new partner and the benefits that have been secured through the regeneration and planning agreements with Lend Lease would be lost; the sale price for the long lease would not be received, and the prospect of further receipts through the overage agreement would also be lost. Further the Council would be required to reimburse Lend Lease for certain investments made to date, in the sum of about £10 million; and it would be unable to recover demolition costs advanced by the Council of about £18 million (plus accrued interest which would also otherwise be repayable by Lend Lease).

77. These costs would have a direct impact on the Council's housing investment programme and would further increase the pressure on this important budget. The consequences would be:

- a delay in letting contracts for estate improvement programmes which are dependent on these funds;

- a delay in the council's ability to meet key political and public investment priorities and in particular achieving the "decent homes" target for all Southwark managed properties by 2016;

- a delay in estate investment inevitably results in an increase in running costs and a further deterioration in the condition of stock, resulting in an increase in the public investment necessary to reach the "decent homes" target.

Further the Council would incur further costs in the order of £2 million in re-running the procurement process, not to mention the further costs of negotiating a new regeneration agreement and dealing with planning applications.

78. (Mr Glasspool has asserted at paragraph 15 of his Response that the Council is set to make an overall loss on the project. This again is incorrect. Once the Regeneration Agreement becomes unconditional the sale price for the long lease will be paid. The level of profit, and hence the share due to the Council, cannot be known until the end of the scheme, when all costs and income have been accounted for. Neither Mr Glasspool, Lend Lease nor the Estates Gazette can know what the overage payment will actually be, or the profit to the developer for that matter. Therefore the figures quoted can only be speculation.)

79. In addition, if Lend Lease pulled out of the Heygate scheme it would create uncertainty for the funding of the important transport and infrastructure improvements and there is a very strong likelihood that TFL would delay implementation of the project. This is because additional resources would be necessary from public funds to bridge the gap and this is unlikely to be available given the demands elsewhere in London. In addition it is the redevelopment of

the Heygate Estate that will generate a very significant part of the additional trips that the infrastructure upgrade is intended to address. Delays in the improvements would have a massive impact on the regeneration of the area and undermine growing developer confidence, which has been fragile.

80. Further Lend Lease has proved itself a responsible and reliable partner. Its costs management has been good and the Council has confidence in its ability to deliver. It would not be in the public interest for that good working relationship to be lost or damaged.

81. Lend Lease is a very good employer: it has good relationships with its employees' union, it pays the London living wage, and has a very robust approach to safety. If the Council had to engage an alternative developer its new partner may not have such a good record.

82. In addition Lend Lease has agreed to provide 25% affordable housing: the DVS advised the Council that the scheme was actually unviable with affordable housing provision at this level, but as detailed elsewhere Lend Lease has committed to achieving that proportion. This represents a good deal for the Council (in spite of the fact that it does not meet the policy threshold of 35%) which may not be achieved again if the project had to be re-tendered, as there is a risk that market conditions may change again for the worse or because of further reductions in the availability of funding for affordable homes or changes in policy in respect of affordability levels.

83. Failure of the agreement with Lend Lease and the consequent massive delays in the regeneration would be an unacceptable outcome for the residents of Southwark, who have already waited over 10 years for the commencement of this much needed regeneration scheme.

84. A less drastic but still very serious consequence would be if Lend Lease decided not to proceed with some parts of the project in order to minimise the losses caused by disclosure. This would undermine the public benefits of the scheme in terms of affordable housing, public space, the integrity of the design, the delivery of new infrastructure, and so on. In addition the Council would incur further costs

in taking forward the regeneration of the plots which Lend Lease was unable to continue with.

85. If Lend Lease was to pull out of some or all of the project, that would have a significant knock-on effect on private sector confidence in the capacity of the public sector to bring forward the successful regeneration of the area. Delays in the improvements would undermine growing developer confidence, adversely affecting the viability of other schemes, and in particular the proposed redevelopment of the Elephant shopping centre which is crucial to changing investor perceptions. As noted above this site has recently changed hands for a significant sum demonstrating growing confidence in the area. The close proximity of the two sites, their prominence and size, and the need to plan them jointly to ensure a coordinated approach to place-making, means that the viability of this project is influenced by the regeneration of the Heygate Estate and vice versa.

86. Furthermore, even if Lend Lease decided to continue with the entire project but its margins were squeezed still further, then this could result in the Council receiving little or nothing from the profit-share provision in the Regeneration Agreement.

87. James Walsh of Lend Lease has explained his evidence that, if disclosure had been required at the time of the request, this would have caused significant delays to the project whilst Lend Lease considered the position in light of the disclosure, and that these delays would have increased the finance costs and risk associated with the project, undermining its viability further. In addition to the consequences of the prejudice to viability outlined here, further delay to the project would not be in the public interest in light of the length of time which the redevelopment has already taken to get underway.

88. It is not in the public interest for commercial developments approved by public authorities to be placed under pressure, or even into doubt, as a consequence of a general public interest in disclosure, where disclosure can be expected to harm the progress or effectiveness of the project.

89. Similarly it would be a very bad outcome in public interest terms if Lend Lease was to withdraw from the non-binding commitments it has made in terms of education, training, tree planting off-site and so on, because its margins had come under so much pressure that it was no longer willing to provide these. Similarly it would be prejudicial to the public interest if Lend Lease sought to renegotiate the section 106 agreement, so that the overall package of benefits described in the statement of my colleague Simon Bevan was diluted. I agree with the statement made by Rob Heasman in his evidence that payment of a penalty in lieu of performance of these obligations would also not be in the public interest, because in those circumstances the Council would receive less than the value of the benefits being and to be provided by Lend Lease.

90. In addition, disclosure of a developer's business plan would distort the markets affected by the development (e.g. in raw materials, building services, finance, professional services, land/property sales and rentals) – there is a strong public interest in a level playing field to allow businesses to compete and produce the best possible offers for purchasers, by reference to their own cost and revenue projections rather than their competitors'.

91. James Walsh of Lend Lease has explained in his evidence that disclosure would result in its competitors "cherry picking" the most innovative and valuable aspects of Lend Lease's business plan, and incorporating them into their own bids for future land purchase and redevelopment opportunities. I do not believe that it is in the public interest for the range of bids facing a seller of public land to be narrowed in this way.

G. Errors in Spinwatch report

92. The Information Commissioner has made reference in paragraph 106 of the Decision Notice to an article by Anna Minton published by the Spinwatch organisation. A copy appears at [Open Bundle Tab F1 pages 547-574].

93. At page 9 of the article Ms Minton states (in reliance on information published by a local pressure group called Southwark Notes) that 79 of 2,535 homes in the new development would be available to rent as social housing. This is correct, but it ignores the fact that a further 212 affordable rented homes will also be

provided, and a further 296 will be shared ownership, resulting in a minimum of 587 affordable homes. As noted above, depending upon the outcome of detailed consents, this figure could increase to a maximum of 617 affordable homes.

94. Ms Minton also incorrectly describes "affordable housing" in the same paragraph. She asserts that all affordable housing can be offered at up to 80% of market rent. In fact, as noted above, this cap only applies to the "affordable rented" type of accommodation (as opposed to social rented housing which is typically charged at about 40% of market rent).

95. Secondly, only the smaller rented units, of 1 and 2 bedrooms, will be "affordable rented homes" (as opposed to social rented homes) - the difference between market rents and social rents is less at this unit size. Further the cap for the affordable rented properties has been agreed with the Council at 50% of local rents, not 80%, which obviously means that rents are lower. The larger units, of 3 and 4 bedrooms, will be charged at about 40% of market rent and made available to families on Southwark's waiting list for social housing.

96. Ms Minton also refers to Tom Branton and Kura Perkins having left the Council to join Lend Lease. They were relatively junior members of staff who had little or no influence over the Council's decision-making. Their decision to move to the private sector had no bearing whatsoever on the regeneration process.

97. Ms Minton also refers to "Four Local", a consultancy set up by former Leader Jeremy Fraser and joined by former councillor Steve Lancashire. I am not aware that Four Local had any involvement with the Elephant and Castle regeneration. Mr Fraser stood down in 1998 and Mr Lancashire in 2002. Neither was involved with the Council's selection of a development partner, or the negotiations of the Regeneration Agreement or Lend Lease's planning obligations, either during their time as Councillors or afterwards. I strongly refute any suggestion that those former Councillors have exercised any influence on the regeneration process since they stood down as Councillors.

98. Ms Minton also cites Southwark Notes' criticisms of the consultation as though they were fact. The reality is that the consultation process has been full and encouraged a great deal of participation. There has been full consultation and

public involvement in the course of development policy-making, the planning process, and the compulsory purchase process. There have been many objections, but they have been fully and properly considered and responded to by the Council. There is no substance to Southwark Notes' criticisms of the consultation process.

Conclusion

99. In light of all the above, I believe that criticisms of the Council's strategy for replacing the housing on the Heygate Estate are unfounded, and that the balance of the public interest lies in preserving the confidentiality of the developer's business plan in order to safeguard the progress of the vital regeneration of the Heygate Estate and the Elephant and Castle area.

100. I believe that the facts stated in this witness statement are true.

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Jon Abbott

9 January 2014