



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

**by Wenda Fabian BA Hons Dip Arch IHBC**

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

**Date: 5 April 2013**

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**Town and Country Planning Act 1990**

**Acquisition of Land Act 1981**

**for confirmation of**

**The London Borough of Southwark (Elephant & Castle No 1)  
Compulsory Purchase Order 2012**

Inquiry held on 5, 6, 7 & 8 February 2013

Inspections were carried out on 6 February 2013.

The London Borough of Southwark (Elephant & Castle No 1) Compulsory Purchase Order 2012

File Ref: APP/NPCU/CPO/A5840/70937

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**The London Borough of Southwark (Elephant & Castle No 1)**

**Compulsory Purchase Order 2012**

- 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 the London Borough of Southwark on 14 August 2012.
- The purposes of the Order are to secure the carrying out of development, redevelopment or improvement of the Order Land by: the redevelopment of a new mixed use development including new retail, residential, office community uses, public open space and public realm improvements, which is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area.
- The main grounds of objection are: the policy basis on which the Order was made was rescinded prior to the making of the Order; the development proposed is not viable or deliverable; the proposal fails to conform to the Local Plan; an alternative scheme for refurbishment would require less funding, without the wholesale loss of structurally sound dwellings by demolition or the loss of mature trees; a balance has not been struck between individual human rights and the wider public interest; inadequate consultation; the management of the proposed publicly accessible park by a private company will not ensure 24 hour free access by the public; the lack of on-site renewable energy generation; the lack of guaranteed local jobs on site, post-construction; excessive parking provision; insufficient provision of affordable housing on site.
- When the Inquiry opened there were four remaining statutory objections<sup>1</sup> and three non-qualifying additional objections<sup>2</sup>. One statutory objection was withdrawn at the opening of the Inquiry<sup>3</sup>.

**Summary of Recommendation: The Order be confirmed.**

**Procedural Matters and Statutory Formalities**

1. At the Inquiry the London Borough of Southwark Council's Counsel confirmed that all statutory formalities had been complied with. The convening notice was taken as read. There were no points arising.
2. The original seven statutory and three non-qualifying objections are contained in the case file. Three statutory objectors (the Institute of Traditional Karate & Performing Arts, London Power Networks plc and Mr Mehmet Tilki and family) withdrew before the Inquiry. A further statutory objector, the United Reform Church withdrew by letter at the Inquiry opening. Several additional objections were made at the Inquiry, some orally and some in writing, in support of both statutory and non-qualifying objectors. These are reported below.

**The Order Land and Surroundings**

3. The Order Land amounts to around 9 hectares and comprises some 750 dwellings; these are the major part of a large system-built housing estate, completed in the early 1970s in the Elephant & Castle area of Southwark. The

<sup>1</sup> Objections by The Heygate Leaseholders Group (Mr Glasspool, Mrs Ojeikere, Mr and Mrs Joseph) and the United Reform Church.

<sup>2</sup> Better Elephant (Mr Novakovic), Elephant Amenity Network (Mr Flynn), Mr Flynn on his own behalf.

<sup>3</sup> The United Reform Church confirmed withdrawal of its objection by letter dated 5 February 2013. (Core Document CD4)



original estate amounted to around 1,212 dwellings<sup>4</sup>, some on smaller adjacent sites (see paragraph 6 below). Across Elephant Road to the west is the over-ground railway line raised above street level on a series of traditional brick railway arches and the underground and railway stations with the Elephant & Castle shopping centre complex. Just south of this, directly across the railway line from the Order Land, is the recently built Strata residential tower block. The whole area lies close to the City of London and within sight of many recent developments there as well as the Shard on the south bank of the Thames, within Southwark.

4. The Order Land shown on the Order Map<sup>5</sup> includes three long multi-storey deck-access slab blocks of one and two bedroom flats which are arranged around the edge of the site, aligned with Elephant Road to the west, New Kent Road to the north and Rodney Place to the east. These perimeter blocks include garages at ground level with open access balconies serving the flats above. The Crossway United Reform Church, a detached building and part of the original development, also faces onto New Kent Road. Within the interior of the estate are ten shorter four-storey blocks of three bedroom maisonettes, all aligned in one direction, with the upper maisonettes also reached by an open access balcony. Ground floor maisonettes have small front and rear gardens and are interspersed by communal open space generously planted with trees. Trees also line some of the streets around the estate and all are now mature. These provide a characteristic leafy environment in the locality.
5. The Order Land is also bounded by Heygate Street to the southeast and Walworth Road to the southwest. Between the residential blocks and the surrounding main roads are raised interconnecting walkways at first floor level, supported on long blocks of single garages. Bridges lead from them across the surrounding main roads to link with nearby areas. The long garage courts are reached from a service road that loops around the estate, accessed only from Heygate Street.
6. On the other side of Heygate Street (created as part of the estate) are two further multi-storey slab blocks of one and two bedroom flats and a block of maisonettes, part of the same estate; these lie outside the Order Land but within the proposed regeneration scheme. Also across Heygate Street, within a small 'tail' to the Order Land is the 'Centre' building which previously accommodated community facilities at ground floor including a meeting space, doctor's surgery and clubroom, with commercial/shop units above, reached from the elevated walkways. Alongside this is a more recent single storey hip roofed pavilion, formerly the Council's neighbourhood housing office. Opposite across Rodney Road is a smaller site, also part of the original estate and formerly comprising similar residential blocks to those on the Order Land, which have now been demolished. This land is subject to a separate development proposal, known as the Rodney Road scheme.
7. The area to the south of the Order Land and the rest of the original estate is typified by older residential properties on a more conventional linear street layout. This includes two and three storey mainly brick terraced housing, brick

<sup>4</sup> Mr McGreal's POE paragraphs 4.1, 4.2

<sup>5</sup> CD3 Council's Statement of Case appendix 1



four storey flats, interspersed with small landscaped areas of open space, public houses and small shops and sporadic more recent infill development within the traditional fine grained street layout. The railway line is lined mostly by larger commercial properties and beyond this to the west is a similar mix of traditional terraced housing and blocks of newer brick apartments.

8. The Order Land as a whole is denoted as Plot 1 on the Order Map and Schedule. Within the Order Land 20 individual plots (2 – 21) are shown. The Inquiry heard evidence on behalf of the three remaining statutory objectors in respect of plots 2, 3 and 5. These relate to leasehold properties; two maisonettes and an upper flat. Two of them remain occupied, plots 2 and 5 (although the Council disputes the occupation of the flat, plot 5).

### **The proposed development**

9. The Council's planning committee resolved on 15 January 2012 to grant outline planning permission (ref 12-AP-1092)<sup>6</sup>, subject to completion of a s106 agreement with the developer and referral to the Mayor of London, for *'redevelopment to provide a mixed use development comprising a number of buildings ranging between 13.13m (AOD) and 104.8m (AOD) in height with capacity for between 2,300 (min) and 2,469 (max) residential units together with retail (Class A1-A5), business (Class B1), leisure and community (Class D2 and D1), energy centre (sul generis) uses. New landscaping, park and public realm, car parking, means of access and other associated works'*. All the buildings, walkways and bridges within the Order Land, as well as the ones across Heygate Street, described above, would be demolished as part of the redevelopment scheme (referred to throughout this report as 'the scheme'). Planning permission for the demolition (ref 12-AP-3203) was resolved to be approved on the same basis<sup>7</sup>. Demolition is planned to take place in 4 stages, between 2013 and 2015.
10. The scheme concept has been designed by Make architects, whose director has been involved in the evolution of the supplementary planning guidance and masterplan since the late 1990s. It focuses on a central park, with many of the existing mature trees retained, and a series of some eleven 'courtyard' plots comprising separate buildings grouped around shared landscaped spaces. The detailed design for each of the separate plots within the scheme would be by different architects to provide individual character within the scheme<sup>8</sup>. Most groups include one building denoted as a tall block between 14 – 30 storeys (outline application description, up to 105m high). Other blocks in each group are indicated to be from 13m high. They are intended to accommodate a mix of commercial (including retail and restaurant/café uses), business and residential spaces. The parameter plans, which form part of the application, would be secured by condition and by the s106 agreement; they indicate a breakdown of accommodation by area and height and establish the minimum amount of publicly accessible space. In summary the scheme will provide<sup>9</sup>:

- Up to 2,469 dwellings

<sup>6</sup> On file with SoC and SoR

<sup>7</sup> Inquiry Document 12

<sup>8</sup> Dr Shuttleworth's oral evidence

<sup>9</sup> Dr Shuttleworth's POE presentation page 24



- 60 shops
- 16 cafes and restaurants
- Business space for around 300 workers
- Leisure or gym space
- Community and cultural space
- 616 car parking spaces, 240 of these for mobility impaired users
- 3,136 cycle parking spaces
- Approximately 217,000m<sup>2</sup> of development

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

11. The Compulsory Purchase Order has been made under the appropriate statutory powers. The procedural and other requirements of the process in terms of notices and publication of the Order have been met.

#### **The policy background to the Compulsory Purchase Order**

12. The Council's aspirations for the regeneration of the Heygate Estate date back to before the 1995 adoption of the London Borough of Southwark Unitary Development Plan (UDP), in which the Elephant & Castle area was designated for regeneration by policy R.2.1<sup>10</sup>. By that time the Heygate Estate had been identified by the Council as a problem, due to its negative contribution to the visual environment in the area and the high cost to the Council of fulfilling its obligations as landlord to maintain and manage the estate<sup>11</sup>. These problems were attributed to the social effects, including extensive vandalism, caused by the 'brutalist architectural style', in particular the elevated walkways and the lack of an active frontage to the surrounding streets arising from the blank enclosing walls at ground level behind the garage blocks, as well as the prefabricated concrete construction system (Jespersion)<sup>12</sup>. The estate lies at the heart of the wider regeneration area.
13. In 1998, almost 25 years after completion, the Council undertook an options appraisal<sup>13</sup> which found the estate buildings structurally sound but needing complete refurbishment. It also showed that 82% of residents disliked the high-rise blocks and walkways. One option considered was repair and refurbishment. Although this was assessed as having the lowest capital cost, it would be least effective as it would not alter the external appearance of the buildings or address the wider social issues caused by the estate layout and the walkway system. The recommendation of the options appraisal was to opt for partial demolition of the perimeter blocks of flats and refurbishment of the maisonettes. This was on the basis that full demolition and rebuilding (whilst

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<sup>10</sup> CD19A

<sup>11</sup> Inquiry Document 34

<sup>12</sup> Options Appraisal Brief CD33, Council's Statement of Case (CD3) paragraphs 2.2-2.6 and evidence given orally at the inquiry by the Council's witnesses

<sup>13</sup> CD30 page 602 paragraph 12.7



the best architectural, technical, social and environmental solution) would not be an option which the Council could finance without private sector partnership<sup>14</sup>. In 1999, an opinion survey of estate tenants by MORI found 70% wished to move to a new home.

14. Following recognition that complete demolition, with redevelopment by the private sector, would be the better option, a competitive selection process for a development partner was held and the Council entered a cooperation agreement in 2001 with Southwark Land Regeneration PLC, as its preferred development partner for the Elephant & Castle. However, the agreement was terminated the following year when the parties failed to agree terms for the regeneration. Also in 2001, the Council's Housing Committee to cease long term lettings on the estate<sup>15</sup>.
15. During 2002-3 further survey work by Marketlink Research<sup>16</sup> was carried out with analysis of the overall regeneration area and in July 2002 the Council's Executive endorsed a report setting out a new project approach – A Fresh Start for the Elephant & Castle<sup>17</sup>. The report recorded the proposed re-housing of all residents of the Heygate Estate as central to the plans for the environmental renewal of the area and further recorded that 'referencing' of all households was underway to produce a detailed definition of the housing requirements of each.
16. In February 2003 the Executive accepted the recommendations of a report<sup>18</sup> which recorded that 80% of households on the estate had been surveyed on a door-to-door basis; 700 new social housing units would be needed to meet their needs and a possible 100 further units to meet the needs of relocated leaseholders. New homes were to be provided through development on a combination of the Council's own sites and affordable housing secured through the planning process on privately developed schemes. These were referred to thereafter as the 'early housing sites'.
17. This process informed the Council's key objective, set out by the Emerging Framework Principles, December 2002, (EFP)<sup>19</sup>: *to exploit the strategic location of the Elephant & Castle and stimulate sustainable economic, social and environment regeneration and renewal throughout south central London*. It set out the intention to produce area specific planning guidance documents with the emerging UDP and the approach to consultation on these documents. (They were to be: a development framework to guide the regeneration of the Elephant & Castle over the next 15 years, a framework for contributions and an illustrative masterplan). The EFP also recorded the strategic importance of the Council's control over a large proportion of the land within the regeneration area and stated: *if the potential of the area is to be released then it will be necessary to remove the elements which have a negative impact and which constrain the area's ability to change*<sup>20</sup>.

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<sup>14</sup> CD30 page 595a, 601a

<sup>15</sup> CD3 paragraphs 2.7-2.9

<sup>16</sup> CD31

<sup>17</sup> CD22

<sup>18</sup> CD22b page 3, paragraph 11

<sup>19</sup> CD18 page 4, section 1.1

<sup>20</sup> CD18 page 12, Principle 1, fourth paragraph



18. The Heygate Estate was identified as one of these elements<sup>21</sup>: *The area east of the railway line is dominated by the high density residential blocks that comprise the Heygate Estate. A recent consultation exercise with residents highlighted the many physical problems that exist in relation to the buildings and the public realm. The layout of the estate and the arrangement of the individual blocks mean that it has become isolated from its surroundings and people are discouraged to move through the estate. The built form has a negative effect on the environment and much of the accommodation is unsuitable for modern 21st century living. The removal of these buildings will require a parallel strategy to be developed to re-house the residents of the estate in new build accommodation within the Elephant & Castle area. This relocation strategy will need to be developed in close consultation with the existing residents and Council Members.*
19. The Council's Elephant & Castle Development Framework Supplementary Planning Guidance, 2004, (SPG)<sup>22</sup> was based on the EFP objectives. It was originally published as a consultation document in June 2003, was area specific and was intended to serve as an Action Plan for the local area of change: *to guide and inform comprehensive change and regeneration* and it identified the central area of the Elephant & Castle for regeneration; this included the Heygate Estate. The illustrative Masterplan within the SPG indicated provision for a minimum of 4,200 mixed tenure new homes to be provided, including up to 1,100 to replace the existing Heygate Estate (in the wider regeneration area). It also showed the provision of new shops, restaurants, cafes, leisure, hotel and cultural uses focused around a new and extended Walworth 'High Street', a Market Square, Town Park, commercial space, new school, leisure centre, library and an energy centre as well as improvements to the transport infrastructure.
20. The three month consultation exercise for the draft<sup>23</sup> SPG comprised extensive media coverage, exhibitions, newsletters, briefings and focus group discussions. *The process sought to engage with as many people as possible and involved existing residents, businesses, landowners, developers, statutory and non statutory consultees such as the Mayor, Transport for London (TfL) and The London Development Agency. The main purpose of the consultation was to obtain feedback in relation to the key themes and principles and as a result to start the process of building a consensus as to needs and priorities and the way forward for the regeneration of the Elephant & Castle. The Council was extremely encouraged by the levels of response and the fact that some 80% of people expressed their support for the strategy advanced by the consultation document.*
21. The objectives of the SPG were embedded into the Southwark Plan, which was adopted in 2007<sup>24</sup>. It records that the Elephant & Castle opportunity area is one of two areas identified by the London Plan where major changes are possible and desirable to meet London strategic objectives<sup>25</sup>. On the adopted Proposals

<sup>21</sup> CD18 page 12, Principle 1, second bullet

<sup>22</sup> CD15

<sup>23</sup> CD15 page 4, paragraph 1.3

<sup>24</sup> CD13

<sup>25</sup> CD11



Map<sup>26</sup> the Heygate Estate is within the allocated proposals site 39P; this is identified in saved policy SP20 of the Southwark Plan. Appendix 3 to the policy identifies the target housing numbers for the site. Policy 6.1<sup>27</sup> of the Southwark Plan also refers to site 39P and lists eighteen detailed requirements for development in the opportunity area. This policy was saved but replaced by policies in the Core Strategy when it was adopted in 2011.

22. The SPG and Southwark Plan objectives were consolidated in the Council's Core Strategy, 2011, (CS)<sup>28</sup> with an updated strategic planning framework set out for new development at the Elephant & Castle opportunity area. The Supplementary Planning Document and Opportunity Area Planning Framework, 2012, (SPD/OAPF) formally replaced the 2004 Elephant & Castle Development Framework SPG<sup>29</sup>.

**Whether the purpose for which the land is to be acquired fits in with the adopted planning framework for the area, or where no such up-to-date framework exists, with the core strategy and any relevant Area Action Plans in the process of preparation in full consultation with the community**

23. The National Planning Policy Framework (the Framework), paragraph 14, sets out a presumption in favour of sustainable development. It highlights that plan-making should objectively assess needs and positively seek opportunities to meet them. In decision-making, proposals which accord with the development plan should be approved without delay. The proposed development scheme would bring about strategic change and growth on a substantial previously developed site in a highly accessible location. It would deliver significant planning benefits, including a large number of new homes and jobs.<sup>30</sup>
24. The London Plan, 2011<sup>31</sup>, policy 2.13 includes the Elephant & Castle as one of the opportunity areas where the Mayor will provide proactive encouragement, support and leadership for partnerships preparing and implementing planning frameworks to realise these areas' growth potential. Policies 2.14, 3.8 and 3.9 promote working with strategic partners to achieve sustained renewal of the regeneration areas, seek a choice of homes of different sizes, types and tenures and support building mixed and balanced communities. Policy 3.14 resists the loss of housing, including affordable housing unless it is replaced at existing or higher densities with at least equivalent floor space. Southwark's Local Development Framework is consistent with these policies and the Mayor has confirmed that the Southwark Core Strategy, 2011, and the SPD/OAPF are both in general conformity with the London Plan.
25. The Core Strategy vision<sup>32</sup> 2011 - 2026 for the Elephant and Castle opportunity area states: *We are using our land at the heart of the area to stimulate 440,000sqm of new development with up to 45,000sqm new shopping and leisure floor space and 25,000-30,000sqm of business floor space. We will meet*

<sup>26</sup> CD16

<sup>27</sup> CD13 page 419-420

<sup>28</sup> CD12

<sup>29</sup> CD14 page 10, paragraph 1.3.2 first bullet

<sup>30</sup> Mr Bevan's POE paragraphs 5.5, 5.6

<sup>31</sup> CD11

<sup>32</sup> CD12 page 44, paragraph 4.27



*our target of 4,000 new homes and a minimum of 1,400 affordable housing units by working with the local community, registered providers and private developers to deliver new homes. We will also meet the London Plan target of 5,000 new jobs by encouraging more offices, hotels, small businesses and developing the evening economy and cultural activities. It also sets out the vision for a highly integrated new transport hub including an improved Northern line station with a new ticket hall. It states: we will work with Transport for London and Network Rail to bring forward these improvements and will have due regard to the detailed principles set out in the Elephant & Castle Development Framework (2004), or any development plan documents or updated supplementary planning documents which may from time to time be adopted to guide development in this Opportunity Area.*

26. CS policy 5<sup>33</sup> also records the 4,000 new homes target for Elephant & Castle and requires housing density in this Central Activities Zone of 650 – 1,100 habitable rooms per hectare. Policy 6<sup>34</sup> requires as much affordable housing as is financially viable and seeks provision of a minimum of 1,400 affordable housing units in Elephant & Castle opportunity area and the Elephant & Castle housing sites between 2011 and 2026, by requiring a minimum of 35% affordable housing units on developments of more than 10 units. The policy seeks a range of housing types with varied neighbourhoods. It seeks to avoid areas being dominated in future by one type of housing. It also stipulates that developments in the area should have at least 10% of units with 3, 4 or 5 bedrooms. The scheme meets this last provision and would provide 1054 rooms per hectare, in accordance with the upper density target for the area.
27. Whilst the policy requirement for 35% affordable housing would not be met by the scheme for the estate, the policy is subject to viability. The District Valuer Service has been used by the Council to assess the financial information provided by Lend Lease (the Council's development partner) and has independently assessed the scheme's viability in the current market circumstances. Whilst questioning some of the figures used, his advice was that overall the developer's financial appraisal presents a reasonable account of the viability of the scheme. In one of several financial scenarios examined he found the scheme development costs would justify only a 9.4% provision of affordable units<sup>35</sup>. On the basis of its own assessment and a longer term view (the scheme would take 13 years to complete), Lend Lease has offered a greater proportion and the Regeneration Agreement secures 25% affordable housing (half affordable rent, including some social rent, and half shared ownership). This reduced provision has been accepted by the Council on the basis of viability considerations in the current economic climate.
28. The SPD/OAPF<sup>36</sup> provides a framework that will guide development over the plan period to coordinate sustainable regeneration. It was subject to public consultation and amendment prior to adoption in accordance with statutory requirement and the Council's consultation policy set out in its Statement of

<sup>33</sup> CD12 page 78

<sup>34</sup> CD12 page 82

<sup>35</sup> CD21A page 29, paragraph 150

<sup>36</sup> CD14



Community Involvement 2008<sup>37</sup>. The joint document was adopted by the Council and endorsed by the Mayor; the Council and Greater London Authority worked closely together on its preparation. It sets out an agreed approach to help provide a robust basis on which forthcoming planning applications can be assessed. The intention is to provide clarity for members of the public and give more confidence to developers to invest in the area. It sets out the vision and strategic objectives for the Elephant & Castle opportunity area from the London Plan 2011 and the Core Strategy 2011.

29. Section 5.2.5 of the SPD/OAPF sets out the strategy for the Heygate Street character area and provides policies for its development. The area extends beyond the Heygate Estate, but the strategy clarifies that approximately 2,500 new homes should be provided through a phased development on the Heygate Estate site.
30. Other strategic aims listed in the SPD/OAPF include the provision of: retail opportunities including large format stores and smaller affordable retail units; a mix of business, leisure and community uses on the site; a development contribution to public transport services improvement; strong links between the shopping centre and the development via the railway viaduct arches; north-south and east west routes through the site; a market square and new public park on site; maximising the number of retained trees on site; highest quality new buildings to create a rich and diverse new neighbourhood and sense of place; interim uses during development to reduce blight; a tall building to define, with Strata, a gateway to the central area; a cluster of tall buildings close to public transport services and a managed transition to lower scale ones in the Brandon Street and Walworth Road character areas; a combined heat and power plant/communal heating system.
31. The scheme for the Order Land (as described at paragraphs 9 & 10 above) would meet the strategic and detailed provisions set out in the Core Strategy. It is genuinely plan-led and follows extensive consultation that has empowered local people to shape their surroundings. It has been developed in line with the current planning guidance (SPD/OAPF), which has also been developed following extensive consultation with the local community, elected representatives the Council's project officers for the opportunity area and key stakeholders over a prolonged period of several years. The SPD/OAPF carries forward the principles established in previous area specific planning guidance.
32. The scheme complies with up to date development plan policy, which is based on up to date evidence to ensure that housing needs are met in full. This is consistent with the Government's core planning principles set out in the Framework. It has been designed in accordance with planning guidance specific to the site. It would deliver a high quality of design and a good standard of amenity for all. It would produce sustainable economic development within an identified opportunity area, close to existing central transport services and would contribute to improvements in the transport infrastructure as well as promoting walking and cycling. It would include a dedicated energy centre. These outcomes accord with the central themes and core principles of the Framework.

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<sup>37</sup> CD19B



33. The Council's planning committee has resolved to grant outline planning permission (see paragraph 9 above) for the scheme. There are no planning or policy impediments to implementation of the scheme for the Order Land.

**The extent to which the proposed purpose will contribute to the achievement of the promotion of the economic, social or environmental well-being of the area**

34. The central objective of the regeneration is to change the Elephant & Castle from an area of economic, social and environmental weakness to one of opportunity and success. Whilst structurally sound at the time of the options appraisal in 1999, the need for complete refurbishment of the Heygate Estate had been identified by then. There are only a few existing small commercial units, raised above street level at one small area of the existing Heygate Estate, which give a very limited opportunity for the site to contribute to employment provision and the local economy. The relatively low density residential provision further limits its contribution to the strategic aims for the area.
35. The problems associated with the estate and its effects on the wider Elephant & Castle area are well documented throughout the Council's approach to the regeneration of the area over a period of more than 15 years and were summarised in the EFP (see paragraph 18 above). These are set out more fully in the Council's brief for the Options Appraisal<sup>38</sup> as well as in the Options Appraisal report<sup>39</sup>.
36. Since the decision set out in the EFP to opt for demolition and redevelopment, Make Ltd (architects) was commissioned during 2004 to draw up a development framework for the Elephant & Castle and in early 2005 the Council commenced the procurement process to find a main commercial development partner for the regeneration project. Lend Lease were selected in July 2007 after a competitive tendering exercise that complied with EU and domestic procurement requirements. The recession and worldwide financial crisis prolonged negotiations, but a Regeneration Agreement was signed between the Council and Lend Lease in July 2010<sup>40</sup>.
37. The redevelopment scheme for the Order Land, funded by Lend Lease and concept designed by Make Ltd architects, arises from extensive public consultation. It is now subject to a Council resolution to grant outline planning permission and it would result in a new mixed but inclusive residential population as well as bringing employees and visitors to the site. The proposed mix and layout would provide active frontages at ground floor level and encourage activity at all times throughout the day. This would maximise natural surveillance, reduce the opportunity for crime and improve perceptions of safety in the area. It would provide pedestrian routes through the site at ground level which would open it up and improve pedestrian permeability from the surrounding areas<sup>41</sup>.

<sup>38</sup> CD30 additional pages

<sup>39</sup> CD30

<sup>40</sup> CD24, CD28

<sup>41</sup> Dr Shuttleworth's POE



38. The scheme would play a substantial role in meeting the borough-wide housing targets and those specific to the Heygate Estate, as set out in the SPD/OAPF. The mixed tenure dwellings would include a minimum of 25% affordable homes. Delivery of this proposed quantity and quality of housing would not be financially possible for the Council through the refurbishment of the existing estate.
39. It would replace poorly insulated high energy use housing with highly insulated housing constructed to achieve Code 4 Sustainable Homes Standard. There is the opportunity to raise this to Code 5, if the option for using bio-methane in the proposed energy centre is pursued. The energy centre that would be part of the scheme is one of the most efficient ways to supply low carbon heat to homes in urban areas. It may be possible to connect it to other buildings in the surroundings. The energy strategy for the scheme would achieve a 50% reduction in CO<sub>2</sub> emission levels over that set in the current Building Regulations. If bio-methane is ruled out as a feasible option then the opportunity for on-site renewable energy sources will be considered in the detailed design for each reserved matters application<sup>42</sup>.
40. The scheme would provide financial and other contributions to a range of infrastructure improvements, secured by a s106 agreement in accordance with the Council's s106 planning obligations Supplementary Planning Document<sup>43</sup> (s106 SPD) and the rates required by the SPD/OAPF, as well as a guaranteed 25% provision of on-site affordable housing and 10% provision of affordable retail rented space (the retail space affordable rents for 5 years)<sup>44</sup>.
41. The contributions would assist with funding improvements to: the northern roundabout, to remove pedestrian subways and installation of signals at surface-level crossings; additional bus services to offset the impact of increased housing levels; and to the Northern Line underground station ticket hall at Elephant & Castle through the installation of additional lifts or alterations to provide escalators. Financial contributions via the s106 agreement would also be made for education and over 12s play provision, in accordance with the Council's s106 SPD and in line with the Mayor's community infrastructure levy (CIL) tariff set in the London Plan. Many of the s106 requirements are to be made as on-site provision (employment during construction, employment within the development and health and community facilities – for which there is a default sum secured in the event of non-provision on site)<sup>45</sup>.
42. The scheme would provide a significant level of open space (4.5ha in total), secured through the outline permission parameter plans and the s106. This includes public squares, play provision, new public routes through the site and a new 0.8ha publically accessible space; this park would provide open space for the residents of the scheme and for the wider community in the Elephant & Castle opportunity area. The park cost would be well in excess of the general requirement for the area set out in the s106 SPD. There is a comprehensive strategy for retaining existing trees on the site and replacement of those

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<sup>42</sup> Council's rebuttal to HGL's statement, Inquiry Document 5a and CD21a page 78 paragraphs 412-416

<sup>43</sup> Mr Bevan's POE appendix 2

<sup>44</sup> CD21A page 67-72

<sup>45</sup> CD21A page 70



proposed to be felled<sup>46</sup>. Of the 406 existing mature trees on the site some 283 would be removed for the development. However, 119 (42%) of these are category C or R (those that would be lost within the next 10 years due to their current condition). Removed trees would be replaced with 283 new trees on site and an additional 1,200 trees off site in the surrounding area<sup>47</sup>.

43. The scheme is estimated to generate 10,800 construction jobs during the thirteen year demolition and construction programme – averaging 830 per year. Of these, the s106 would include provisions to secure employment for up to 397 local unemployed residents for a minimum of 6 months. The scheme would include commercial space for office, retail, community and leisure and this would inevitably generate additional employment on site, with the potential for up to 1,255 jobs (including part time and full time), subject to the detailed reserved matters applications. This would help increase the level of local expenditure and improve the local retail offer, without diverting significant trade from other nearby retail centres. The s106 would provide a financial contribution of £257,961 to enable the Council to establish schemes to assist local people to secure jobs within the employment opportunities created on the site<sup>48</sup>. The scheme is estimated to have the potential to contribute up to £37.6 million per year to the local economy<sup>49</sup>. In addition, overage/superprofit provisions are in place via the RA, which would ensure that a share of excess profit from the scheme is returned to the Council's capital budget<sup>50</sup>.

#### **Funding and deliverability of the Scheme**

44. The Council's development partner, Lend Lease is experienced in delivering regeneration projects of a significant size and complexity and has a strong track record in London of partnering with public sector landowners. It delivered the Bluewater shopping centre in Kent on the site of a redundant quarry in the 1990s. More recently it has been involved in delivering key projects including the Greenwich Peninsular master plan, BBC Media City at Salford Quays as well as the East Village in Stratford, through its work with the Olympic Delivery Authority. Lend Lease has the ability to fund the project from within its own resources and by raising finance. It was founded in 1958 in Australia. It has a 'stable' credit rating according to the S&P and Moody rating agencies and is now ranked in the top 8% of property companies in the 2012 Dow Jones World Sustainability Index<sup>51</sup>.
45. By entering into the RA, Lend Lease has committed fully to the scheme and already has a team of over 100 people working on the project. It has engaged in a high degree of community consultation during the scheme development<sup>52</sup>. The outline planning application has been the culmination of this initial process and so far £12 million has been invested in developing the scheme. The working up of the detailed scheme for a reserved matters application for the Heygate Estate site is underway. Subject to confirmation of the Order (the RA

<sup>46</sup> Inquiry Document 51

<sup>47</sup> Inquiry Document 20

<sup>48</sup> Inquiry Document 28

<sup>49</sup> Mr Abbot's POE Section 6

<sup>50</sup> Ms Reed's POE paragraphs 3.38 – 3.41

<sup>51</sup> Lend Lease Annual Report 2012 with Mr Heasman's POE

<sup>52</sup> Mr Heasman's POE section 5



requires vacant possession of the Order Land) the anticipated start date for the first construction phase on the Heygate Estate site is during 2014.

46. In parallel with this Lend Lease has developed the Rodney Road scheme, which is now also subject to a resolution to grant outline planning permission, approved in February 2013, on the same basis as that for the scheme for the Order Land/Heygate Estate site. In addition, Lend Lease's *One Elephant* project, on the site of the former swimming pool, is a further mixed use scheme which will facilitate provision of a new Elephant & Castle Leisure Centre. This should commence on site in June 2013. Expenditure to date for this and the Rodney Road scheme is £8 million – a total of £20 million investment in the regeneration of the Elephant & Castle opportunity area by Lend Lease<sup>53</sup>.
47. No public roads will need to be stopped up, so no Road Closure Orders are needed for the development to proceed. Heygate Street, which runs through the scheme site and bounds the Order Land, would remain open throughout the demolition and construction phases. The high level walkway links have the status of public footpaths, but alternative routes exist. Where these have already been demolished, rights of way were previously extinguished under s118 of the Highways Act 1980 and the same measure will be used for the remaining ones as necessary, the relevant notices have been published in the local press<sup>54</sup>. Former play space<sup>55</sup> (not designated as open space) at the edge of the site will be appropriated by the Council<sup>56</sup>.
48. Following selection of Lend Lease as development partner in 2007, the estate tenants have progressively been de-canted and re-housed in a planned approach<sup>57</sup>. The vast majority of the estate is now vacant and boarded up. The residential units have been decommissioned by removing bathroom and kitchen fittings and disconnecting services.
49. From 2007 secure tenants were given priority allocation for all properties available in the Borough, including new build Registered Social Landlord units. Former residential tenants have now all been relocated, many within the Early Housing Sites. Those who wished a new build affordable property are entitled, by a Right to Return Agreement, to one either through the early sites programme or one secured in a development within the core area – the agreement will expire in 7 years from its date of signing<sup>58</sup>. The Council has confirmed that if sufficient suitable new dwellings have not come forward in time to fulfil all such agreements, the duration would be reviewed<sup>59</sup>.
50. Since 2004 the Council has negotiated successfully with 98% of leaseholders on the estate (arising from Right to Buy sales). To date, some £25 million has been expended by the Council in securing leaseholder acquisitions<sup>60</sup>. All but three leaseholders (see paragraph 59 below) have surrendered their leases by

<sup>53</sup> Mr Heasman's POE section 4

<sup>54</sup> Ms Reed's POE section 5

<sup>55</sup> CD35

<sup>56</sup> Inquiry Document 15

<sup>57</sup> CD23c

<sup>58</sup> Mr Abbot's POE paragraph 5.16

<sup>59</sup> Oral evidence given at the inquiry

<sup>60</sup> Mr Abbot's POE paragraph 5.34



agreement<sup>61</sup>. Some commercial tenants remain; in one case notice has been served that the lease will expire in November 2013 and a similar notice will be served on a further tenant at the appropriate time. In other cases the relevant provision of the Landlord and Tenant Act 1954 will be invoked to terminate the right to renew the lease<sup>62</sup>. The commercial units are only included in the Order as a measure of last resort; the Council fully expects to secure possession through this normal landlord and tenant procedure.

51. No additional land is needed by the Council to satisfy its obligation with regard to site assembly in the RA and the Order Land comprises only that which is necessary for the re-development.
52. In order to bring forward the demolition phase of the scheme so as to minimise the cost of continued security measures at the estate, promote confidence in the area and to accelerate its visual improvement, the Council has opted to bring forward the demolition of buildings on the Order Land, at a different stage to that set in the RA. The demolition costs will be paid upfront by the Council but reimbursed by Lend Lease with indexation<sup>63</sup>.
53. The Elephant & Castle project as a whole is Lend Lease's flagship mixed use urban regeneration project in London. Lend Lease has made a substantial financial and reputational commitment to the successful delivery of the project<sup>64</sup>.

#### **The case for compulsory acquisition**

54. The problematic design of the Heygate Estate has impacted negatively on the Elephant & Castle area. No realistic alternative proposals for the Order Land and buildings have been put forward by any of the Objectors or any other party. The Council considered alternatives, including refurbishment, during the process of developing its strategic policy for the Heygate Estate.
55. The scheme for the Order Land is well founded in development plan policy and accords with wider planning objectives to regenerate the Elephant & Castle opportunity area. It would improve the economic and social prospects of the community in the area and fulfil the potential of its central London location. Without confirmation of the Order, the scheme could not be implemented and the poor characteristics of the estate would remain, with no alternative way to introduce the improvements and community benefits that would be provided by the redevelopment scheme.
56. The Council owns the freehold to the Order Land<sup>65</sup>. The strategy for re-housing tenants from the estate has included securing the construction of new homes in the Borough. Some 547 new affordable homes (social rent) will shortly have been provided on the early housing sites. On the same sites there will be a total of 509 additional intermediate homes. Thus an overall total of 1056 affordable homes will shortly have been developed in this phase, a substantial

<sup>61</sup> Mr McGreal's POE section 4

<sup>62</sup> Ms Reed's POE section 5

<sup>63</sup> CD29 paragraphs 7, 15

<sup>64</sup> Mr Heasman's POE

<sup>65</sup> Ms Reed's POE section 4



step in the delivery of 1100 replacement homes for the wider Heygate Estate agreed in June 2003<sup>66</sup>. (This total figure includes around 131 under construction and 284 with planning permission but not commenced). Further, the scheme for the Order Land would secure 575 – 617 more affordable homes. At the minimum these would be 71 three bedroom units at target social rent, 194 one or two bedroom units at affordable rents and 268 shared ownership<sup>67</sup>. This would meet the requirements for the provision of affordable housing set in the development plan.

57. The three leasehold tenants (the remaining statutory objectors, plots 2, 3 and 5) who have not surrendered their leases by agreement are the only impediment to the Council providing vacant possession of the site to the developer as required by the RA<sup>68</sup>. All possible avenues to reach voluntary agreement with these individuals for the sale of their leasehold interests at market value to the Council have been explored, without reaching completion<sup>69</sup>.
58. London Borough of Southwark Council 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 site. It considers that it is justified in interfering with the human rights of the remaining residential leaseholders affected, having regard in particular to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and to Article 8 of the Convention. The use of the powers contained in section 226(1) (a) of the 1990 Act would facilitate the development, redevelopment or improvement of the area, thus meeting the statutory tests. A proportionate approach has been followed. The public benefits of the redevelopment would be significant; they are likely to contribute to the social, economic and environmental well-being of the Elephant & Castle area, in accordance with OPDM Circular 06/2004 (the Circular). The Council believes there is a compelling case in the public interest for the compulsory acquisition of the Order Land.

<sup>66</sup> Mr Abbot's POE paragraphs 5.12-5.14 (the figures given here are as corrected in the Council's rebuttal to Elephant Amenity Network, Inquiry Document 5c)

<sup>67</sup> CD21a page 32 and Inquiry Document 53 Council's Closing Submissions paragraph 22

<sup>68</sup> Ms Reed's POE section 3, paragraph 3.18.2

<sup>69</sup> Mr McGreal's POE section 4



## The Objections

59. There were seven statutory objections and two non-qualifying objections made in writing prior to the Inquiry. These are set out as follows: The four withdrawn statutory objections, the three remaining statutory objectors, the two non-qualifying objectors.

### The Withdrawn Objections:

**Objector 1 – Mr George Andrews, Institute of Traditional Karate and Performing Arts, Okinawan Traditional Goju-Ryu Karate Association**  
Tenant occupant

Order Land Plot 20: 21-23 Brandon Street London SE17 1NA

60. The objection was formally withdrawn by letter dated 5 December 2012 from Mr Andrews<sup>70</sup>. There are no outstanding matters.

**Objector 4 – Mr Mehmet Tilki, Mrs Mahpeyker Tilki and Ms Semra Tilki**  
Leasehold occupants

Order Land Plot 4: 49 Chearsley, Deacon Way London SE17 1SW

61. The objection was formally withdrawn by letter dated 14 January 2013 from Mr Tilki and family<sup>71</sup>. There are no outstanding matters.

**Objector 6 – The United Reform Church** Leasehold occupant

Order Land Plot 8: Crossway Church, Heygate, London

62. The objection was formally withdrawn by letter dated 5 February 2013 from Cobbetts LLP on behalf of the United Reform Church Trust. The Church Trust and the Council entered into an agreement, a completed copy of which accompanies the letter<sup>72</sup>. There are no outstanding matters.

**Objector 7 – London Power Networks Plc** Leasehold occupant

Order Land Plots 6, 7, 11 and 12

63. The objection was formally withdrawn at the Inquiry by letter dated 1 February 2013 from London Power Networks Plc<sup>73</sup>. The letter states that a Deed of Undertaking has been provided by the Council. There are no outstanding matters.

### The Remaining Statutory Objectors: The Heygate Leaseholders' Group

**Objector 2 – Mr Adrian Glasspool** Leasehold occupant

Order Land Plot 2: 49 Cuddington, Deacon Way, Heygate London SE17 1SR

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<sup>70</sup> CD4

<sup>71</sup> CD4

<sup>72</sup> CD4

<sup>73</sup> CD4



**Objector 3 - Mr Frantzis and Mrs Elizabeth Joseph Leaseholders**

Order Land Plot 3: 21 Cuddington, Deacon Way, Heygate London SE17 1SP

**Objector 5 - Mrs Mojisola Ojeikere Leasehold occupant**

Order Land Plot 5: 63 Marston, Deacon Way, Heygate London SE17 1UW

**The Case for the Statutory Objectors: Heygate Leaseholders' Group (HLG)**

(Each main heading below is taken from the HLG Statement of Case<sup>74</sup> and the oral evidence to the Inquiry by Mr Glasspool, a leasehold occupant. Points are recorded in brief. The London Borough of Southwark Council's responses, as set out in its written rebuttal,<sup>75</sup> are summarised at each heading.)

**The Order does not meet the statutory purpose for which it was made**

64. The Circular states that any programme of land assembly needs to be set within a clear strategic framework, and this will be particularly important when demonstrating the justification for acquiring land compulsorily as a means of furthering the well-being of the wider area.
65. The Council's Major Projects Board initially passed a resolution to make the Compulsory Purchase Order in July 2007. This was subsequently retracted and an amended resolution was passed by the Executive in February 2010. Both resolutions showed that the Order was situated within a 'clear strategic framework' – the 2004 Elephant & Castle Development Framework SPG (the Masterplan).
66. In October 2002, the Acquiring Authority announced that it had instructed one of the world's leading architects, Foster + Partners to create the 2004 Development Framework Masterplan. The demolition of the shopping centre, roundabout and link road, in order to create a civic square with integrated public transport interchange was core to this. Following failure to reach agreement with a development partner, the 2004 Masterplan was scrapped, and the Regeneration Agreement signed with Lend Lease in 2010 was amended such that it only included the replacement of housing on the Heygate Estate.
67. The replacement 2012 SPD/OAPF was drawn up to replace the 2004 SPG, with only one month for consultation. The references to demolition of the shopping centre, civic square and public transport interchange were removed, as well as to the peninsularisation of the Northern roundabout and traffic system rerouting. Also absent from the SPD/OAPF were the new arts and cultural facility, the performance square, theatre, museum, library and secondary school, which had all originally been included in the 2004 SPG. However, these core proposals are still referred to in the Southwark Core Strategy 2011 and saved policies of the Southwark Plan 2007.

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<sup>74</sup> HLG SoC – several updates were submitted in the days leading up to the inquiry, the most recent version, received 1 February 2013, is on file in hard copy with the Objectors' statements.

<sup>75</sup> Council's rebuttal to HLG's Statement, Inquiry Document 5a



68. The scheme for the Order Land will lead to a deterioration (rather than improvement) in the economic, social and environmental well-being of the area. The current proposals fail to comply with basic planning policy requirements and will result in:

- The net loss of 300 mature trees
- The net loss of 1,000 social rented homes
- The net loss of 2.4 hectares of public open amenity space
- The net loss of 1,500m<sup>2</sup> of community facilities
- The net loss of 40,000 tonnes of embodied CO<sup>2</sup>.

69. The proposed high density development proposes a cluster of inward facing tall buildings comprising 2,500 residential units of which only 71 will be social housing. The original vision for a car-free zero carbon development has now been replaced by a development which proposes 616 car parking spaces and no renewable energy provision. The public park will be managed by a private Estate Management Company.

70. The current programme of land assembly, therefore, fails to be set within a clear strategic framework and fails to demonstrate the justification needed for acquiring land compulsorily.

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

71. The Council's land assembly plans are set within a clear strategic framework. The framework for the Elephant & Castle opportunity area is set out in the development plan, which is detailed at Mr Bevan's Proof of Evidence, section 5. The context of the SPD/OAPF<sup>76</sup> is set out in full within it – *the SPD does not establish new policies*. It establishes the revised strategic framework for the opportunity area, was prepared over the course of approximately a year and was consulted on in accordance with statutory requirements and with the Council's procedure for a total of 12 weeks. The document was available on the Council's website, at libraries and one-stop shops. Letters were sent to 3,000 consultees and numerous events and meetings were held with the community, including with the Elephant Amenity Network. The consultation generated 205 written responses.

72. The SPG was not a masterplan; it set out development objectives and included an *illustrative* masterplan. It has been appropriately revised and consulted on to reflect changed delivery circumstances in the intervening period. The scheme for the Order Land complies with this updated strategic framework and does not preclude delivery of the wider aspirations for the opportunity area, including an improved shopping centre and transport infrastructure.

73. The Council is committed to the regeneration of the shopping centre and transport interchange and is working with partners to achieve this. Whilst the shopping centre forms part of the Regeneration Agreement signed with Lend Lease in 2010, it was envisaged that this development would be subject to a separate planning application. There is no reason why the two sites cannot be advanced separately or why the CPO should not be considered at one site independently of the other; the development plan anticipates this. St Modwens, the owners of the shopping centre, intend to develop the shopping centre

<sup>76</sup> CD14 page 11, paragraph 1.4



themselves, in line with the SPD/OAPF. Lend Lease expects to enter into a cooperation agreement with them to develop an integrated proposal. The RA provides for variation to the obligation with regard to the shopping centre; if these negotiations fail, the original RA provisions would be reinstated<sup>77</sup>.

74. The SPD/OAPF transport tariff arrangements are designed to ensure that a coordinated transport solution can be put in place to mitigate impacts. The scheme for the Order Land would directly facilitate this via a substantial financial contribution to transport infrastructure improvements as well as indirectly, by improving market confidence in the area which will help to attract further investment. Lend Lease is working with landowners around the Northern Roundabout to resolve the challenges of improving traffic flow as part of the proposed improvements to it.
75. There will be no net loss of trees<sup>78</sup>. A quarter of the new homes in the scheme will be guaranteed to be affordable as set out in paragraph 56 above. Full details of the breakdown of housing types and of affordable rents and intermediate housing shared ownership costs are set out in the Council's rebuttal statement<sup>79</sup>. The total open space within the scheme would be 12% less than existing, but the existing open space is disjointed and broken up by walls, steps and dead ends or is made up of the verges to the service roadway. There would be a high quality of open space in the redevelopment scheme more accessible to people in the surrounding area. An Estate Management Company would manage the public park and publicly accessible realm for the benefit of all that use it and there would be no fences or restriction to access. Current community space totals 2,530sqm, which includes 685sqm in the Crossway Church. The scheme includes up to 5,000sqm of community space, of which 500sqm would be for health provision. Further community consultation would take place on the details.
76. Low carbon energy objectives are set in CS policy 13<sup>80</sup>. These would be secured in the scheme by the s106 agreement as set out at paragraphs 40 - 43 above. The significant improvement in operational carbon efficiency of the new homes would offset the loss of embodied carbon in the existing estate within 6 years. The justification for parking provision in the scheme is set out in the planning committee report<sup>81</sup>, in addition to disabled parking (required by policy) it would equate to around a 0.15 provision per dwelling. Whilst the scheme should be car free in policy terms this provision has been accepted by the committee on the basis of viability considerations.
77. The scheme was fully assessed by the planning committee taking material considerations, including the SPD/OAPF and the Environmental Statement, into account; and it was found to be in accordance with the development plan.

<sup>77</sup> CD29A paragraph 5(1)

<sup>78</sup> Inquiry Document 20

<sup>79</sup> Inquiry Document 5a, paragraphs 10.2, 10.3

<sup>80</sup> CD12

<sup>81</sup> CD21A paragraphs 225-230



**The underlying scheme is not viable and therefore will not be implemented**

78. The Circular states at paragraph 16(iii): The greater the uncertainty about the financial viability of the scheme however, the more compelling the other grounds for undertaking the Compulsory Purchase will need to be. Concerns were raised in 2003 during the masterplanning stage about the financial viability of the bold new scheme. Currently the officer's report for the outline application<sup>82</sup> states that both development partners are in clear agreement that the proposed development is currently unviable, and acknowledges that the developer is taking a very big risk in delivering the development. This is further supported by the detailed planning application for phase one of the scheme: *The level of affordable housing proposed represents a level that is currently above what is indicated as being viable.* Viability issues are also listed in the Acquiring Authority's risk register as one of the main barriers to the scheme's implementation.
79. Lend Lease's track record at other sites in the Elephant & Castle is of undeveloped sites, with planning permissions granted in 2007, at Oakmayne Plaza/Tribeca Square and London 360 Tower. Both these permissions have been subject to several deeds of variation to reduce the level of planning obligations (including the omission of affordable housing) due to viability. This indicates that the scheme for the Order Land may also not be delivered.
80. The Circular sets out: *It would only be in exceptional circumstances that it might be reasonable to acquire land where there was little prospect of implementing the scheme for a number of years.*
81. Lend Lease withdrew its funding commitment for the demolition on the Order Land in 2011 and the Council has had to agree to funding the £15 million cost from its Housing Investment Programme.
82. A legal challenge to the RA may be possible under Article 87 of the European Community Treaty as it deviates from the 2007 Best and Final Offer submitted by Lend Lease during the European Union procurement process. This is due to the dropping of the shopping centre from the RA and would be on the basis that by abandoning the original town centre vision in the masterplan, there may be a need to re-procure. Further, beyond delivery of phase 1 of the scheme, the RA contains no conditions for any further phases to be completed within a fixed time period. There are 170,000 unbuilt homes, with planning permission, at developments that have stalled in London; this is known as land banking.
83. The Order fails the requirements of paragraphs 22 and 17 of the Circular: *In demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account; and the acquiring authority must be sure that the purposes for which it is making a CPO sufficiently justify interfering with the human rights of those with an interest in the land affected.*

<sup>82</sup> CD21A



**The response for the London Borough of Southwark Council**

84. The Circular paragraph 16(iii) clarifies that *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*. The planning committee considered viability, as set out in the report, and took this into account in reaching its recommendation to approve the scheme. Lend Lease is confident in its overall viability and the success of their development approach in the current economic climate is demonstrated by the current status of the One The Elephant and Rodney Road Phase projects which are both due to start on site this year, with £8 million already invested in them.
85. None of the other sites in the Elephant & Castle referred to above are in the ownership of the Council or Lend Lease. Funding for demolition is explained at paragraph 52 above.
86. The shopping centre has not been dropped from the RA, see paragraph 73 above. The Council has taken legal advice on procurement throughout the process.
87. Lend Lease is committed to the development process<sup>83</sup>.

**The existing use of the land is more important than the purpose for which it is proposed to be acquired**

88. As the scheme is not viable and is not being implemented according to the masterplan, the existing use of the land is more important than the purpose for which it is proposed to be acquired. The Council's current valuation of its housing stock is £954 per square metre<sup>84</sup>. Once refurbished the value of the existing 1,200 home estate would be £110 million. The study by Gensler global architectural consultancy estimates the refurbishment at £35 million, including the additional construction of balconies and an Envac Waste system<sup>85</sup>. Taking these costs, the current value of the estate is approximately £65 million. The purchase price agreed in the RA is £46 million; this equates to a £19 million loss incurred by the Council resulting from the scheme, rather than providing economic benefits.
89. There are 20,000 households currently registered on the Council's housing waiting list. The Council's surveys show that the majority of its residents in the area are unable to afford anything other than social rented accommodation. The alternative, refurbishment of the Heygate Estate, would help to meet the Borough's pressing need for social rented homes. The surveys showed that only 29% of estate residents were dissatisfied with living on the estate and 54% were in favour of refurbishment. Only 32% wanted the estate to be demolished and replaced with new Council homes and only 5% voted for the option that forms the basis of the current scheme<sup>86</sup>. The Council has failed to give due

<sup>83</sup> Mr Heasman's POE paragraphs 4.9, 4.10, 4.13

<sup>84</sup> HLG Statement appendix page 1

<sup>85</sup> HLG Statement appendix pages 13-19

<sup>86</sup> MORI opinion poll survey HGL appendix 9 and Inquiry Document 47 A)



consideration to the results of consultation with its residents, in breach of Article 6 of the Human Rights Act.

90. The Options Appraisal recommended refurbishment. It found positive aspects to the estate including the very low crime rate (45% below the Borough average).<sup>87</sup> Many residents have lived on the estate since its construction 25 years ago and many have lived in the locality all their lives. The Independent Options Appraisal estimated basic repair and refurbishment at just £7.2 million. It recommended against demolition, the most expensive option at £53 million and advocated partial demolition and refurbishment, costed at £41 million<sup>88</sup>. The Council's stock condition survey at the time gave estimated costs for maintenance and repairs over 30 years for the Heygate Estate well below the average in the Borough, £23,363.

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

91. The Gensler report referred to excludes numerous items and must be a significant underestimate of actual refurbishment costs. It seems to overlook the need for full replacement of lifts, communal internal and external lighting, refurbishment of the district heating system and replacement of utility services. The Options Appraisal (the Allot and Lomax report) estimates are now dated and were not based on full building surveys, the Council's past experience is that refurbishment is a high risk approach; there is a tendency to underestimate the cost of working in a restricted environment.
92. The MORI poll, conducted in April 1999, preceded the decision to continue to develop plans for the estate in consultation with residents as part of the regeneration of the Elephant & Castle area. The report on the survey notes that *there appears to be no clear consensus on which of the options for future development should be pursued*. The response to subsequent consultation, based on more information about the options offered by the Council, was more positive<sup>89</sup>. Article 6 of the Human Rights Act is concerned with the right to a fair trial and provides that everyone is entitled to a fair and public hearing by an independent and impartial tribunal. The Council has consulted widely on the planning policy and the regeneration and this Inquiry provides an opportunity for an independent public hearing.
93. Mr Abbot's evidence deals in detail with the Options Appraisal<sup>90</sup>. (See paragraphs 13, 35, 90 above.) The conclusions were tentative and acknowledged redevelopment to be an attractive proposal. In opting for this, the Council took a strategic view of the importance of the site as part of its wider plans for the Elephant & Castle opportunity area.

#### **Human Rights violations – the Human Rights Act 1998**

94. Heygate Estate tenants were asked to leave their homes and promised (a Right to Return) that they would be able to move into new homes on the Heygate site when construction was completed. Had the scheme complied with the Council's policy requirements for affordable housing this would have been possible, but

<sup>87</sup> HLG Statement appendix pages 10-12

<sup>88</sup> CD30 page 595a

<sup>89</sup> Mr Abbot's POE paragraph 5.10

<sup>90</sup> Mr Abbot's POE paragraphs 3.6-3.10



there will be only 71 socially rented homes of the 2,300 proposed dwellings in the scheme, so the Council will be unable to honour the promise. A thousand families had to give up their homes; hundreds under the possibility of eviction proceedings. This is also a breach of Article 8 of the Human Rights Act 1998<sup>91</sup>.

95. The Council's February 2010 resolution authorising the CPO was made against the detailed development framework (2004 SPG). This was rescinded 5 months before the Order was made. The Order is therefore invalid as it has not been properly authorised by the full Council Executive, as required by the Council's constitution and the Acquisition of Land Act 1981. The consideration of the public benefit was made against a proposal which has since been abandoned. The Council's full executive has not been given the opportunity to consider the human rights interferences balanced against the potential public benefits of the current scheme for the site, which was designed to the 2012 SPD/OAPF. The Order is thus in breach of Article 8 of the Human Rights Act, which requires that interferences with human rights are made in accordance with the law<sup>92</sup>.

***The response for the London Borough of Southwark Council***

96. The Right to Return expires in October 2015. The estimated number requiring such properties in 2007 was around 425 and could be met from the early housing sites when complete (419 units at social rent) and from private schemes. Demand was lower than anticipated and the 2011 updated list of these former tenants shows only 170 remaining who wish to return – they will be given first choice as affordable units are completed. The affordable units on early sites that are still to be allocated totals 210 at social rents in addition to those that will come forward from private sites. The Council has acted reasonably and established a programme to meet its commitments to former tenants of the estate.
97. The policy background to the scheme is set out above at paragraphs 12-32. The principle of the scheme, to redevelop the estate and provide an urban quarter with improved permeability, mixed use and a public park at its centre has been consistent. Although the resolution to make the Order preceded the adoption of the SPD/OAPF, it was clearly made in order to implement proposals site 39P designated in the Southwark Plan saved policy SP20<sup>93</sup>.

**Addendum points**

98. The Objectors dispute that the high level walkways make the estate insular; any isolation is due to its location between two major road arteries. The scheme for the Order Land fails to address the impermeability caused by these roads or the problem of traffic noise and pollution that they cause, which the existing boundary blocks successfully mitigate.
99. Only one of the Early Housing sites was completed by the time the majority of tenants were moved off the estate and this provided only 15 social rent units. To date only 228 social rent units have been provided in the 7 sites completed and only 45 former tenants have been relocated to them. Leaseholders were also promised a retained equity option to assist with buying replacement units;

<sup>91</sup> HLG SoC paragraphs 5.5, 5.8

<sup>92</sup> HLG SoC paragraphs 4.4-4.6

<sup>93</sup> Council's rebuttal to HLG SoC, paragraph 26



this has not been honoured. Negotiations with leaseholders have been hampered by the Council's Surveyor who refused to correspond with them directly.

***The response for the London Borough of Southwark Council***

100. The affordable housing provision is as set out in the Council's evidence. The Council negotiated with the Leaseholders' appointed surveyor in accordance with protocol. Retained equity option arrangements were put in place with developers in the area, including at the Strata Tower<sup>94</sup>.

**The Case for the Statutory Objectors: Mrs Ojeikere<sup>95</sup>**  
leasehold occupant

101. The Objector's home is not fit to live in now through lack of maintenance and water leaks caused by decommissioning of other flats – this has been ongoing since 2007. The lifts were shut down in 2010. Most access routes into the block have been closed. There has been no heating other than by expensive electric portable heaters since 2010.

**The Case for the Statutory Objectors (HLG): additional witnesses**

**Social policy**

102. Generally, the supply of social rented dwellings is being reduced and the demand is increasing. This causes serious problems for lower income residents of Southwark. Regeneration typically has an unintended negative effect; it displaces people whose deprivation was the justification for the regeneration. Current housing benefit changes are exacerbating this problem. The scheme proposed for the Heygate land falls so far short of affordable housing provision policy that it does not justify the CPO<sup>96</sup>.
103. Academic research shows that the mixed communities policy does not deliver; it causes gentrification and social segregation rather than social mixing and creates tensions and hostilities. The economic, social and educational trickle down effects anticipated have not emerged; low income people do not benefit from mixed communities, they lose the economic and social advantages of living in a low income community. The rhetoric is about social sustainability, but the CPO will lead to social segregation<sup>97</sup>.
104. A research project is underway as a collaboration between Queen Mary and King's College, University of London. This studies population displacement in the context of council estate demolitions and redevelopment in London. It looks at exclusionary displacement and the impact of affordable rent for residents and businesses as well as the effect of the increases in private rented accommodation in the core opportunity area<sup>98</sup>.

<sup>94</sup> Mr Abbot's POE paragraph 5.17, Inquiry Document 23

<sup>95</sup> Mrs Ojeikere's written statement, Inquiry Document 45

<sup>96</sup> Mr Edwards' written statement, Inquiry Document 21

<sup>97</sup> Prof Lees' written statement, Inquiry Document 26

<sup>98</sup> Ms Ferreri and Mr McGann's written statement, Inquiry Document 46



### **Design merits**

105. The 20<sup>th</sup> Century Society has not applied for listing for the estate for resource reasons, but considers it to be a non-designated heritage asset. The prefabricated industrial building system used for the estate is a crucial part of the history of post war buildings. The estate could be restored and adapted to be more energy efficient and provide attractive and popular homes<sup>99</sup>.
106. The planning context at the time the Heygate Estate was developed was very similar to the current economic circumstances. The Jespersen factory built system was one of the funding requirements at the time. The system was re-engineered to safeguard against progressive collapse. It was designed with at least a 60 year life span and the funding loan period was based on that. The estate is described as fortress-like; this was a deliberate strategy to protect residents from the surrounding heavy traffic and provide a village like quality within it. It was built to generous Parker Morris space standards with natural ventilation throughout and could easily be refurbished<sup>100</sup>.

### **Former tenants**

107. Mr Redpath read his written statement<sup>101</sup>. He lived on the estate from 1974 – 2008 and was active in the Heygate Tenants & Residents Association. The residents' impression was that the estate was run down through lack of maintenance and could be refurbished. Further statements by former tenants are appended to HLG's Statement.

### **The Case for the non qualifying Objectors: Better Elephant**<sup>102</sup> (BE) a local community group

108. The estate is well designed and structurally sound; it became run down due to a lack of cyclical maintenance. This has contributed to the cost of refurbishment now. The social cost of the redevelopment is the dispersal of the Heygate Estate community. Alternatives to demolition and redevelopment exist which are affordable, as demonstrated by the Gensler and HAWSE proposals with cost estimates (appendices to written statement).

### **The Case for the non qualifying Objectors: Elephant Amenity Network**<sup>103</sup> (EAN) an umbrella group representing a number of local groups and individuals, it includes Council tenants, leaseholders, shopkeepers, market traders and amenity groups

109. The shopping centre phase of the Heygate scheme is critical to the success of the regeneration; its suspension means that the scheme will not sufficiently achieve the goal of improving financial expenditure in the area, to provide a

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<sup>99</sup> Ms Croft's written statement, Inquiry Document 2

<sup>100</sup> Mr Tinker's written statement at HLG Statement appendix page 45, oral evidence and Inquiry Document 41

<sup>101</sup> HLG Statement appendix page 43

<sup>102</sup> Mr Novakovic's Statement of Case received 2 February 2013, on file with the Objectors' statements. Further written statement, Inquiry Document 43. Photos, Inquiry Document 44 see also Council's rebuttal to Better Elephant, Inquiry Document 5b

<sup>103</sup> Mr Flynn's Statement of Case on behalf of EAN, see also Council's rebuttal to EAN Inquiry Document 5c



compelling case in the public interest. The multi utility services company (MUSCo) has been dropped, with the public benefits of this lost also.

110. The 1999 MORI survey<sup>104</sup> did not record that 70% of estate residents wished to move to a new home – it showed that 63% of them wished to move to a *new Council home on the estate*. Although the Council has asked for opinions at its presentations, respondents are self selecting; no survey of the estate residents similar to the 1999 one has been carried out since and the Council's claim that tenants support the scheme is dubious. The process of relocation of tenants has caused distress. The partnership agreement that failed included re-housing the tenants on the estate site. They were promised that the first part of the regeneration would be the building of new homes (the early sites programme). The outcome has been that they have been offered a home elsewhere in Southwark – the least favoured option (5%) in the option survey. Only 10% of the original 1,200 households will get the new homes that they were promised.
111. Other matters covered in the EAN Statement include: the lack of provision of affordable housing against policy; the lack of real choice for residents; the net loss of affordable social rent homes on the site and the new affordable rent regime; the process used by the Council to re-house tenants; the developer's track record in Australia on delivery of the provision in the RA for overage; the non car-free scheme; the provision of open space and its management.
112. The further proof of evidence tabled by Mr Lee<sup>105</sup> covers: the policy background and previous community engagement in development of the SPG masterplan; the exclusion felt by residents from the subsequent process for the revised masterplan in the SPD/OAPF; the lack of an Area Action Plan; the lack of input for residents to the RA process and to the scheme development; the impact of affordable rent versus social rent; the Mayor's stage 1 referral report on the scheme.

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

113. The majority of the Council's responses to both Better Elephant and the Elephant Amenity Group reiterate those made in respect of HLG's submissions: the refurbishment option costings are now dated and were not based on full surveys (paragraph 91); the SPD/OAPF does not establish new policies (paragraphs 71, 72); there is no reason why the shopping centre development cannot be the subject of a separate planning application, or why the two sites should not be advanced separately and a CPO considered on one site independently of the other (paragraph 73); the Options Appraisal and MORI poll and the Council's case with regard to re-housing of estate tenants and the provision of affordable housing is set out in Mr Abbot's POE (paragraphs 75, 92, 96). The scheme proposal would secure development plan energy objectives via the s106 (paragraph 76); parking provision (paragraph 76); and open space would be maintained accessible to the public (paragraph 75).

<sup>104</sup> Inquiry Document 47 A)

<sup>105</sup> Mr Lee's POE on behalf of EAN Inquiry Documents 49 and 50



## **Inspector's Conclusions**

(numbers in square brackets refer to relevant paragraphs in this report)

### **Context, policy background and well-being of the area**

114. The Heygate Estate (the Order Land) lies close to the shopping centre, railway and underground stations, an island complex at the heart of the Elephant & Castle in Southwark. The estate was designed during the late 1960s and completed in 1974. It comprises prefabricated deck-access blocks of maisonettes and flats with interlinked raised walkways. Although much softened by the large number of mature trees that characterise the estate, the overall visual impression is of a brutalist style development that (like many of its time) turns its back on the surrounding road system. Due to a programme of planned re-location for tenants, which commenced in 2007, the estate is now almost wholly vacant and many access routes to the walkways and buildings are barred. This empty aspect, combined with the lack of maintenance since, has intensified its forbidding appearance, which sets it apart from other nearby residential areas. [3 - 7, 12, 15, 47]
115. The planning policy basis for the proposed scheme for the Order Land originated over 18 years ago, with the adoption of the 1995 UDP, which designated the Elephant & Castle area for regeneration. By then the Council had already found financial and practical difficulty with managing and maintaining the estate. This arose from inherent factors in its layout and form. An Options Appraisal in 1998 recommended partial demolition of the unpopular high rise perimeter blocks and refurbishment of the maisonettes. However, it also recorded that the best solution would be full demolition and rebuilding, which would require private sector partnership. [12, 13]
116. This last option was taken forward during 2002 in the report 'A Fresh Start for the Elephant & Castle'. The Council's Emerging Framework Principles, 2002, acknowledged the need to stimulate renewal in this part of south central London and recorded that to achieve this some elements would have to be removed, including the Heygate Estate. Accordingly the Council developed area specific supplementary planning guidance for the Elephant & Castle (SPG) published in 2004, with an illustrative masterplan that showed a mixed development scheme for the estate site. It also detailed the provision of new facilities and improved transport infrastructure in the wider Elephant & Castle opportunity area. The SPG was embedded into the 2007 Southwark Plan. [15, 17, 18, 19, 21]
117. The Objectors' view is that as the Council's resolution in February 2010 to make the Compulsory Purchase Order (CPO) was with reference to the 2004 SPG and this had been deleted by then, the Order is not founded in a clear strategic framework. However, the SPG and Southwark Plan objectives were carried forward in the vision set out in the Core Strategy, 2011, which forms part of the current development plan and the accompanying guidance, the Elephant & Castle Supplementary Planning Document and Opportunity Area Planning Framework, 2012, (SPD/OAPF) did not establish new policies for the area. [21, 22, 64 - 67, 71, 72]
118. The proposals site 39P, designated by Southwark Plan saved policy SP20, includes the Heygate Estate site as one where higher density housing should be achieved. Current Core Strategy policies 5 and 6 set target levels for the



provision of new housing numbers and density, as well as the amount of affordable housing provision, subject to viability. The Core Strategy conforms to the London Plan, 2011, which identifies the Elephant & Castle as an opportunity area where partnerships implementing planning frameworks to realise growth are encouraged. The SPD/OAPF, adopted in 2012 formally replaced the SPG and was adopted following public consultation over a total period of 3 months, in excess of the statutory 6 week period, in accordance with the Council's Statement of Community Involvement. [21, 22, 24, 26, 28]

119. The outline development scheme for the Order Land is closely based on the SPD/OAPF aims for the redevelopment of the site and is tied to the detailed provisions that it would deliver, by parameters set out in the outline application. It would provide energy efficient high density housing, with a range of dwelling types and tenures including market housing, social rent, affordable rent and equity share. These last three taken together would constitute a guaranteed 25% affordable housing provision on the site, amounting to a minimum of 575 units. Whilst this percentage is lower than the policy requirement of 35%, the Council's analysis of viability for the scheme has been robust and the partner developer's evidence has demonstrated the agreed guaranteed level to be reasonable and achievable. The Council's planned approach to re-provision of the approximately 750 existing units of social rent housing on the Order Land that would be lost through demolition (some 124 of which had become leasehold, through the Right to Buy) will soon have realised 547 new affordable homes on the 'early years sites'; 1056 in total, including intermediate homes. [3, 26, 27, 29, 30, 38, 39, 56]
120. As well as housing accommodation, there would be a mix of retail, business, leisure and community uses which would stimulate long term employment provision in the area in addition to the jobs created by the 15 year demolition and construction phases. The scheme would be of a high quality standard of design and construction and would achieve energy efficiency above the building regulations requirements. It would also include an energy centre to provide combined heat and power on site. [10, 29 - 31, 39, 43]
121. The scheme would provide significantly enhanced publicly accessible open space and incorporate a good proportion of the existing healthy trees, with additional planting such that there would be no net loss of trees. The much improved quality of public space within the scheme layout, with retail and catering facilities opening onto it, would make a significant positive contribution to the immediate area, which currently lacks a strong sense of place; it would provide a focal public space, largely free of through traffic, with retail and leisure opportunities, that would deliver much greater permeability, encourage penetration of the site by pedestrians from surrounding areas and stitch the site into the fabric of the Elephant & Castle. [29 - 31, 37, 42, 68]
122. The scheme would also provide substantial financial contributions for off site projects including the much needed improvement of the Elephant & Castle rail and underground station and the local road infrastructure (the northern roundabout improvements) as well as to education, play provision and other community facilities in accordance with the Council's s106 planning obligations Supplementary Planning Document (s106 SPD). [10, 29, 30, 31, 40, 41, 42]
123. The Council's resolution in February 2012 to approve planning permission for the scheme (subject to referral to the Mayor of London) demonstrates that it



accords with the up to date development plan and with the key aim of the National Planning Policy Framework for sustainable development; it would bring about strategic change and growth on a large previously developed site in a highly accessible location. The scheme would make a substantial contribution to achieving an improvement in the economic, social and environmental well being of the Elephant & Castle area. [9, 23, 32]

#### **Financial viability and deliverability of the scheme**

124. Following the failure of negotiations with a previous partner developer in 2002, the Council selected Lend Lease as its development partner in 2007 through competitive tender and successfully completed a Regeneration Agreement (RA) with them in 2010. Throughout the development process for the Order Land, Lend Lease has made a considerable financial commitment to working up the scheme and bringing it to planning application stage. This includes the provision of a local information venue (the consultation hub) and participation in numerous consultation events with the local community. It has already commenced the detailed design stage towards submission of reserved matters applications and is currently involved in development projects that are a little further advanced on nearby sites. Lend Lease was founded in 1958, has a proven track record and has been involved in delivering numerous notable regeneration projects in the United Kingdom, including most recently the BBC Media City in Salford Quays and the East Village in Stratford. It is within the top 8% of property companies listed on the 2012 Dow Jones Index. [14, 36, 44, 45, 46]
125. Should the CPO be confirmed, the Council has opted to finance the cost of demolition of the estate, but this would be repaid by Lend Lease once the scheme is under construction. This measure would ensure a speedy start on site. [52]
126. The financial basis for the scheme has been examined independently by the District Valuer, as well as by the Council, and found to be viable. The Objectors have queried this positive conclusion in respect of the level of affordable housing (25% to be provided, whereas the DV found it would only be viable at 9.4% in one scenario). They also question whether the scheme would proceed in a timely manner (with reference to the Circular requirement that land should only exceptionally be acquired where there is little prospect of implementation for a number of years.) However, although commercially sensitive viability figures were not produced for the Inquiry, there is little to cause me to doubt Lend Lease's evidence on this matter or to doubt that there is a reasonable prospect that the scheme will proceed in good time, in accordance with the RA – the reputational consequence for Lend Lease of a market failure on this site so close to the City of London would be substantial. [27, 78 - 81]
127. There is little to suggest that planning permission will not be forthcoming. With the exception of the three plots owned by Leaseholders, which are the subject of the remaining Statutory Objections, there is no other practical impediment to prevent the Council providing vacant access to the site, the RA being invoked and the scheme being implemented. [9, 47 - 51, 60 - 63, 112]



**Could the purpose of the land acquisition be achieved by other means?**

128. The Objectors point out that the buildings on the estate are structurally sound, have a life expectancy of thirty or so more years, with the original building loan not fully repaid and are built to generous housing space standards. They believe the estate is capable of refurbishment to provide energy efficient good quality social rented housing. Although examples of how this could be achieved have been provided, the Gensler study is a set of design principles for an Ideas competition and does not relate to a focussed brief or comprehensive scheme. The cost estimates are broad brush and are not based on a comprehensive building survey. The HAWSE scheme is restricted to conversion of ground floor garages into bedsits. Neither scheme appears grounded in the current reality of the estate as a whole or able to be implemented to a realistic timetable, nor is there any indication how funding could be secured for refurbishment. [88, 91, 105, 106, 108]
129. Moreover, these alternatives would not fulfil current development plan strategic aims that seek mixed tenure high density housing and a greater provision of other employment generating uses on the site as well as greater physical integration with the surrounding area and significant contributions to public transport and road Infrastructure Improvements. [29 - 32]

**Other objections**

130. Former tenants and leaseholders have provided heartfelt submissions that the estate provided them with a strong sense of community and that the standard of housing provided was spacious and of good quality. They also point to the possible status of the estate as a non-designated heritage asset, as representative of a particular era of 20<sup>th</sup> century housing design, but there is little evidence to show that this housing type is so scarce as to warrant retention for its own sake or to justify setting aside development plan objectives for the site. It is clear from the duration of many tenancies that the homes were well loved. However, the majority view appears to have been in favour of either demolition of the perimeter blocks or a drastic reduction in their height; these provide the major proportion of the accommodation. It seems likely that the limited points of entry and exit to the elevated walkways would have discouraged most passing pedestrians (other than those directly visiting the estate) and created a sense of personal insecurity during use, particularly for more vulnerable people. [13, 105]
131. It is suggested that as redevelopment of the existing shopping centre is not part of the scheme, although included in the Regeneration Agreement, the legitimacy of the procurement process could be open to legal challenge. Nevertheless, it is clear from the development plan policies that this aspect is to be achieved within the regeneration of the wider Elephant & Castle opportunity area. Further, its regeneration by the current owner is still feasible and Lend Lease is cooperating in redevelopment project discussions on this basis. [66, 73, 82]
132. Whilst parking provision within the scheme would exceed the requirements set in saved Southwark Plan policies and the SPD/OAPF (such that it would not be a wholly car-free scheme), provision would equate to only 0.15 spaces per dwelling, mostly off-street and subject to a car management scheme. The level



of parking provision has been accepted by the Council to boost the financial viability of the scheme. [69, 76]

133. The quantity of socially rented accommodation available on the site of the former estate would be dramatically reduced, some 71 units compared to the 750 formerly existing. However, around 124 of these had already been lost through right to buy sales. The scheme would provide around 575 units of affordable housing in all and sufficient re-provision either on or off site would be achieved, in accordance with development plan targets. Although these would be at higher levels of rent than were current on the estate recently<sup>106</sup>, 25% of the residential accommodation on site would remain defined as affordable housing, with rent levels pegged at 50% of market rents, or available for purchase with equity share provisions, delivered at affordability levels defined half by the Council and half by the Greater London Authority. These measures would meet the Government's requirements and those of the development plan for affordable housing provision. The social policy criticisms levelled at this aspect of the regeneration scheme are a matter of wider social policy consideration, not unique to the Order Land or this CPO. [27, 38, 56]

#### **Human Rights considerations**

134. The Objectors have referred to a possible contravention of Article 6 of the Human Rights Act 1998, in respect of their view that the Council has failed to give due consideration to consultation responses about the future of the estate. The Council has demonstrated that numerous consultation exercises have been carried out over the years. These have been specific to the estate and to the regeneration of the wider area as well as with respect to evolving development plan policies. There is little to show that there has been anything fundamentally wrong with the Council's approach to consultation in respect of the scheme for the Order Land. [20, 28, 31, 67, 71, 89, 92, 95]
135. In relation to the legality of the Order under Article 8, as set out at paragraphs 117 and 122 above, the Order has been made in accordance with current development plan policies. Attention has also been drawn in terms of Article 8 to the process followed by the Council to achieve re-location of tenants from the estate, in particular the use of Notices of Seeking Possession which gave some tenants the impression that they would be evicted. The Council clarified at the Inquiry<sup>107</sup> that these notices were only used to elicit a response where officers had been unsuccessful in engaging directly with tenants by means of letters, phone calls or door to door calls to establish their re-location requirements and the notices were accompanied by a letter explaining this. No evictions took place. Relocation of the tenants and the majority of leaseholders has been achieved in accordance with the Council's planned strategy over a period of around 5 years. The Council has persevered in repeated attempts to acquire the three remaining leasehold properties by negotiation, without success. [15, 18, 48, 49, 50, 95, 110]

<sup>106</sup> Inquiry Document 4, Inquiry Document 30

<sup>107</sup> Inquiry Document 32



### **Overall conclusions**

136. The need for regeneration of the Elephant & Castle area has been highlighted for over 18 years in both the Mayor of London's and Southwark Council's policies. The redevelopment of the Heygate Estate is a critical component of this, crucial to revitalisation of this part of the Borough and the provision of an increased number of dwellings in this inner city location as well as for the provision of enhanced employment opportunities. The proposed scheme for the Order Land has been the subject of a long process of ongoing consultation and the scheme has been in gestation for over 10 years; its delivery is over-due.
137. The London Borough of Southwark Council, the Acquiring Authority, has worked consistently towards the delivery of redevelopment of the site through a proper planning process, well founded in a strategic framework of development plan policies underpinned by detailed guidance and an illustrative masterplan. These policies have also been subject to a thorough process of public consultation. A formal agreement is in place with a development partner that is capable of funding the scheme, selected by means of a legitimate competitive tender process. Outline planning permission, with defined parameters, is on the point of being secured. There are no evident obstacles to the scheme proceeding according to the timetable set out in the Regeneration Agreement.
138. As required by section 226(1)(a) of the Town and Country Planning Act 1990, as amended, the Acquiring Authority has clearly demonstrated how the project would contribute to the promotion or improvement of the economic, social or environmental well-being of the area, in particular, through the creation of a minimum 2,300 new dwellings, including 25% affordable homes, employment space capable of supporting around 1,255 new full and part time jobs, the provision of new publicly accessible open space and the visual enhancement of the area through new well-designed buildings and public spaces, more fully integrated with the site surroundings than the existing estate. The scheme is a key part of the wider regeneration of the area.
139. Article 1 of the First Protocol of the Human Rights Act 1998 affords a right to peaceful enjoyment of a person's possessions including protection of property rights. The three leasehold properties belonging to the remaining Statutory Objectors are each located in a different block within the estate; without securing their vacant possession, the Council's obligation under the Regeneration Agreement to deliver this would not be fulfilled, the redevelopment scheme would be thwarted and the clear public benefits of the proposal would be lost. There is no clearly feasible alternative proposal. Were a scheme for limited alteration and refurbishment of the existing buildings pursued, this would inevitably delay regeneration of the site and the surrounding area for a prolonged period; it would also fail to deliver up to date development plan targets with regard to the delivery of new housing and employment.
140. Taking all these matters into account, as well as the concerted efforts made by the Council to acquire these properties by voluntary agreement, it is evident that there is a compelling case for acquisition of the Order Land and I consider that confirmation of the CPO would be in the public interest.



141. In reaching this assessment I have considered whether the purpose for which the Order was made sufficiently justifies interfering with the human rights of the three leasehold owner Objectors under the provisions of Article 8, and Article 1 of the First Protocol of the Human Rights Act 1998. Whilst the three properties have been the owners' homes for many years and they wish to continue to live in them, this is not a realistic prospect; the vast majority of the estate has been emptied, de-commissioned and is consequently no longer habitable. Funding to restore it as suggested is not available to the Council other than by partnership via the Regeneration Agreement and the proposed scheme. Consequently, I conclude that such action is justifiable as a last resort to secure the public benefits that would accrue for the wider area from the redevelopment of the site. The making of the Order is a necessary and proportionate approach; a fair balance would be struck between the public interest and the interests of the owners, and the interference is justified.
142. I conclude that confirmation of the Order would meet the tests of section 226(1)(a) of the Town and Country Planning Act 1990, as amended. It would also meet with the requirements of Appendix A paragraph 16 of Circular 06/2004: Compulsory Purchase and The Criche Down Rules.

## **Recommendation**

### **File Ref: APP/NCPU/CPO/A5840/70937**

143. I recommend that the London Borough of Southwark (Elephant & Castle No 1) Compulsory Purchase Order 2012 be confirmed.

*Wenda Fabian*

Inspector



## APPEARANCES

### London Borough of Southwark Council

Miss Mary Cook  
of Counsel

instructed by Ms Doreen Forrester-Browne,  
Director Legal Services, London Borough of  
Southwark

She called:

Dr Ken Shuttleworth

Mr Jon Abbot

Ms Katharine Reed

Mr Rob Heasman

Mr Patrick McGreal

Mr Simon Bevan

Chairman of Make Ltd

Elephant & Castle Project Director

Specialist Property Lawyer

Land and Planning Director Lend Lease  
Development

Principal Surveyor Property Services Department

Acting Director of Planning

### The Statutory Objectors to the Order

Mr Adrian Glasspool

Mrs Mojisola Ojelkere

Mrs Elizabeth Joseph

They called:

Mr Michael Edwards

Professor Loretta Lees

Ms Catherine Croft

Mr Tim Tinker

Mr T Redpath

Ms Mara Ferreri and

Mr Paul Mc Gann

Heygate Leaseholders Group

Heygate Leaseholders Group

Heygate Leaseholders Group

Senior Lecturer, Economics of Planning,  
University College London

Cities Group, Department of Geography, King's  
College London

The 20<sup>th</sup> Century Society

Lead architect for the Heygate Estate

Former resident of the Heygate Estate

Researchers, collaboration, Queen Mary and

Kings Colleges, University of London

### The Non-qualifying Objectors to the Order

Mr Rastko Novakovic

Mr Jerry Flynn

He called:

Mr Richard Lee

Better Elephant

Elephant Amenity Network

### Interested Parties who questioned the Council during the Inquiry:

Mr Edwards

Ms Sayarer

Mr Castells

Ms Cronin

Mr Misek

Ms Santa Pedone

Mr Cheyne

Mr Tubbs

University College London

Local resident

Local resident

Local resident

Local resident

Local resident

Participant, Olympic village CPO Inquiry

Local resident



DOCUMENTS – all documents listed below are also available in electronic version, see USB stick provided by the Council to the Inquiry and attached within the Core Documents lever arch file, Volume 1

### **DOCUMENTS - Council's Proofs of Evidence**

- 1 Dr Ken Shuttleworth
- 2 Mr Jon Abbot
- 3 Mr Simon Bevan
- 4 Ms Katharine Reed
- 5 Mr Rob Heasman + Lend Lease Annual Report 2012
- 6 Mr Patrick McGreal

### **DOCUMENTS - Objectors' Submissions prior to the Inquiry**

- 1 Heygate Leaseholders Group Statement of Case + Addendum + appendices pages 1 – 45 + additional witness statements
- 2 Better Elephant Statement of Case
- 3 Elephant Amenity Group Response to [Council's] Statement of Case (5 January 2013)

### **CORE DOCUMENTS**

CD1 – CD38 see Index at Core Documents lever arch files, Volumes 1 & 2

### **DOCUMENTS - tabled at the Inquiry**

- 1 Council's procedural file
- 2 Statement by Ms Croft, Director C20 Society
- 3 Inserted at CD4: copies of letters withdrawing objections by United reform Church, Mr Tilki and family, London Power Network
- 4 Inserted in Core Documents: revised index; CD19B; CD21A; CD38
- 5 Council's responses to Objector's written statements:  
a) HGL rebuttal, b) BE rebuttal, c) EAN rebuttal
- 6 Opportunity Area Planning Framework/SPD 2012 (CD14 extracts only)
- 7 Development Framework 2004 – SPD
- 8 Letter from Gensler 5 February 2013
- 9 Inserted at CD30: page 601a Basis of Cost Information
- 10 Inserted at CD30: page 595a Options Appraisal Comparison Chart
- 11 Inserted at CD37: FOI response dated 21 January 2013 re Notice to seek possession
- 12 Recommendation report re application to demolish 12/AP/3202
- 13 Heygate replacement housing sites plan
- 14 Strategic Report 25 January 2000 with Appendix one and further appendices
- 15 Appropriation of land s122(2A) Notice dated 21 January 2013
- 16 Delegated report 14 August 2012
- 17 Forward Plan January 2010- April 2010
- 18 Inserted at CD 26a page 422a
- 19 Protocol on Key Decisions (pages 93 – 94)
- 20 Additional responses to questions put in the inquiry – Make Architects
- 21 POE tabled by Mr M Edwards
- 22 Council's response to HLG Addendum to Statement of Case



- 23 Council's response to questions regarding shared equity offer in Strata
- 24 Print of web page Hansard Column 231 regarding Jespersion system built flats in Gosport
- 25 Report on Elephant & Castle Leaseholder Policy 8 February 2005
- 26 Statement tabled by Professor L Lees
- 27 Early Opportunity Area & Early Housing Sites – Housing Figure Projections 22.07.09, hand annotated by Mr Flynn
- 28 Council's clarification of forecast local employment figures generated by the development of the Heygate Estate
- 29 List of relocated addresses for Heygate Leaseholders
- 30 Table of weekly rents in SE17 July 2012
- 31 List of housing sites within the SPD/OAPF area (CD14)
- 32 Council's Statement on Use of Notice Seeking Possessions as part of Heygate re-housing
- 33 Heygate Options Appraisal Briefing Document (CD30)
- 34 List of major works to Heygate Estate incurring expenditure 1989 – 1999
- 35 Council's statement regarding leaseholders/secure tenants
- 36 Heygate Rehousing Project version 1, September 2007
- 37 Development Capacity Assessment – August 2010
- 38 Section C6 from New Homes for Heygate – residents' re-housing pack
- 39 Council's statement to Inquiry regarding phase 1 habitat survey
- 40 Table of sample rents for Heygate Estate 2011/2012
- 41 Heygate Redevelopment 1969 proposals brochure
- 42 Inserted at CD files – revised Index showing additional tabled core documents
- 43 Submission on behalf of Better Elephant by Mr Novakovic
- 44 Photographs taken on the Heygate Estate (slide presentation to the Inquiry)
- 45 Statement by Mrs M Ojeikere
- 46 POE of Ms M Ferreri and Mr P McGann
- 47 Bundle of submissions tabled by Mr Flynn:
  - A) MORI survey
  - B) Appendix C to CD 31a
  - C) Section C4 'New Homes for Heygate' 2005
  - D) handwritten letter 14 July 2008 from resident Ms O'Brien
  - E) Notice posted by the Heygate Tenants and Residents Association June 2007
  - F) Heygate Action Plan – answers to your question July 2007
  - G) Council's report 21 November 2007 'Number of Residents Remaining'
  - H) Council's Completed schemes – Affordable housing
  - I) Council's closing submissions re the Southwark Plan Elephant & Castle Early Housing Sites
  - J) Southwark UDP Inspector's Report extract
  - K) Southwark Housing Requirements Study 2008 main report 2009 page 95
  - L) Southwark's response to the London Plan revised Minor Early Alterations consultation June 2012
  - M) Lend Lease document – Outline Planning Application – Affordable Rent March 2012
  - N) Council's website – SE17 rents
- 48 Brochure – Southwark Homeseach 15 July 2010
- 49 POE by Mr R Lee
- 50 Bundle of supporting information tabled by Mr Lee:
  - 1) Delivery Plan 2001-2002 E & C regeneration partnership
  - 1A) SPG consultation



- 2) planning report 15 January 2010
- 3) Elephant Amenity Network open letter to Soundings
- 4) Soundings January 10, 2013
- 5) Southwark's response to the London Plan revised Minor Early Alterations consultation June 2012
- 6) Mayor's stage 1 report 11 July 2012
- 51 Tree Strategy, Tree Strategy Addendum, Tree Strategy Drawings (bundle of 11 drawings)
- 52 Council's Opening Submissions
- 53 Council's Closing Submissions