



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

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

Date 16 May 2008

TOWN AND COUNTRY PLANNING ACT 1990

APPEALS BY ARGENT ST GEORGE, LONDON AND CONTINENTAL RAILWAYS  
AND EXEL PLC

AGAINST

(A) THE DECISION OF THE COUNCIL OF THE LONDON BOROUGH OF ISLINGTON

TO REFUSE OUTLINE PLANNING PERMISSION

AND

(B) THE FAILURE OF THE COUNCIL OF THE LONDON BOROUGH OF CAMDEN TO GIVE  
NOTICE WITHIN THE PRESCRIBED PERIOD OF ITS DECISION ON AN OUTLINE  
APPLICATION

FOR

MIXED USE DEVELOPMENT OF PART OF THE FORMER RAILWAY LANDS WITHIN THE  
CAMDEN KING'S CROSS OPPORTUNITY AREA AND AN ISLINGTON AREA OF  
OPPORTUNITY

AT

KING'S CROSS CENTRAL – THE TRIANGLE SITE

Inquiry held on 19-22 February 2008, 31 March - 1 April 2008 and 4 April 2008

Site inspection conducted on 7 April 2008

King's Cross Central - Triangle Site: Land between York Way, the Thameslink 2000 Rail Line and the  
East Coast Main Line

File Refs: APP/V5570/A/07/2051902 and APP/X5210/A/07/2051898

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**Appeal A: Ref APP/V5570/A/07/2051902**

**Appeal B: Ref APP/X5210/A/07/2051898**

**King's Cross Central - Triangle Site: Land between York Way, the Thameslink 2000 Rail Line and the East Coast Main Line**

- **Appeal A** is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Argent St George, London and Continental Railways and EXEL Plc against the decision of the Council of the London Borough of Islington.
- The application Ref P041261, dated 24 May 2004, was refused by notice dated 17 July 2007.
- **Appeal B** is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Argent St George, London and Continental Railways and EXEL Plc against the Council of the London Borough of Camden.
- The application Ref 2004/2311/P, is dated 24 May 2004.
- The development proposed in **both applications A and B** is described in the applications as "mixed use development of part of the former railway lands within the Camden King's Cross Opportunity Area and an Islington Area of Opportunity, as set out in the Revised Development Specification. The development comprises residential; shopping, food and drink and professional services within the A1, A2, A3 and A4 use classes; a health and fitness centre (use class D2) incorporating medi-centre facilities, a crèche and community facilities (use class D1); amenity and open space; habitat area; recycling and other ancillary uses; parking; highway works to provide access; and other supporting infrastructure works and facilities."

**Summary of Recommendations: I recommend that both appeals be allowed, subject to conditions.**

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## **1. Procedural Matters**

- 1.1 These appeals effectively relate to a single and un-severable proposal. Applications were submitted to both Islington and Camden London Borough Councils solely because the site straddles the respective administrative boundaries (*CD1.4, drawing TS001*). In the interests of brevity and simplicity, this report considers the appeals as a single entity, except where differences in policy regime and approach to decision making between the respective Local Planning Authorities demand otherwise. The appeals were recovered by the Secretary of State for her own determination part way through the Inquiry, at the behest of two of the parties (*ID9.13, ID11.6*).
- 1.2 The applications were submitted concurrently with the Appellants' proposals for a much more extensive part of the former King's Cross railway lands, known as the "Main Site" (*CD1.4, drawing Context 001*), and a combined Environmental Statement (*CD1.16-CD1.20*) was submitted for both. Following negotiations with the Councils, the Appellants made revisions to the proposals for both sites in September 2005 and an Environmental Statement Supplement (*CD1.25 and CD1.28*) was produced. Further Environmental Information for the Triangle Site alone was requested by the Secretary of State on 26 November 2007 under Regulation 19 of the 1999 Regulations in the form of a combined assessment of operational noise and vibration impacts and an assessment of the impact of wind turbulence (*CD1.27A*). The scheme revisions and all of the further Environmental Information was compiled and publicised before the opening of the Inquiry, so no third party interests have

been prejudiced. The Environmental Statement, together with this additional Information, has been produced in accordance with the 1999 Regulations (as amended) and this report takes account of it, and of the views expressed on it by statutory consultees and others.

- 1.3 The application forms indicate that siting and means of access (to the extent defined and explained within the Development Specification) are not reserved matters.
- 1.4 The Revised Development Specification (*RDS, CD1.4*) includes a considerable amount of further information in amplification of the proposals, some of which is expressed as firm proposals and some as more general aspirations. A range of specific scheme components is also considered in the Environmental Information and in the Statement of Common Ground (*ID8.3*) that accompanies the appeals. Following exchange of correspondence on the subject during the course of adjournment (*ID8.8, ID9.9, ID11.4, ID12.10*) and discussion with the parties at the Inquiry, it was agreed that the description of the proposed development should mirror that in the RDS (*CD1.4, paragraph 3.1*), as follows:

“Mixed use development of part of the former railway lands within the Camden King’s Cross Opportunity Area and an Islington Area of Opportunity. The development comprises: residential; shopping, food and drink and professional services within the A1, A2, A3 and A4 use classes; a health and fitness centre (use class D2) incorporating medi-centre facilities, a crèche and community facilities (use class D1); amenity and open space; habitat area; recycling and other ancillary uses; parking; highway works to provide access; and other supporting infrastructure works and facilities.”
- 1.5 As such, it falls to planning conditions and obligations to define more closely any development that the Secretary of State may decide to permit, within the ambit of that description, the parameter plans and the scope of the Environmental Information.
- 1.6 There are also two matters that Islington London Borough Council wish to record in relation to its reason for refusal. The first is that the reference to PPG3 should be to PPS3 and, secondly, that following a Direction under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004, Islington UDP policy H16 has not been saved and is thus no longer current. The parties accepted these points at the Inquiry and the evidence was heard accordingly.

## **2. The Site and Surroundings**

- 2.1 The Triangle Site (*CD1.4, context plan 001*) is part of the former railway lands to the north of King’s Cross and St Pancras Stations. It extends to about 1.1 ha and represents a small proportion of the Appellant’s total land holding in the area which amounts, in all, to some 26 ha (the Main Site and the Triangle Site together). Its name derives from the fact that it is bordered on three sides by major transport infrastructure. Its principal frontage, to the south west, is to the busy York Way, which has recently been realigned to pass under a bridge carrying the Channel Tunnel Rail link (CTRL) into St Pancras Station. Land alongside the approach of CTRL to and from this new bridge, for use as a CTRL muster area, defines the site’s north-western boundary, where a new tunnel is currently under construction to route Thameslink trains from the East Coast Main Line Railway (ECMLR) into St Pancras Station and beyond. This

tunnel continues underneath the north part of the site and under the Main Site. The ECMLR itself passes under an enclosed viaduct carrying CTRL a short distance further to the north (photographs on pages 2 and 3 of ID8.3) and passes the eastern boundary of the appeal site in a cutting as it approaches a tunnel leading into King's Cross Station. There is also a short section of return frontage to Randell's Road, off York Way, at the southern extremity of the site.

- 2.2 The site is at present mainly level, but rises steeply on a grassy slope at its southern end. For the most part, it is unused but a small area around the present entrance off York Way is the temporary home for some metal storage containers and sundry other items as well as for car parking. The currently largely undeveloped land for some distance on the opposite side of York Road falls within the Appellants' Main Site. To the south and east, in Randell's Road and nearby Rufford Street, residential uses predominate but there are also warehouses here and, notably, a concrete batching plant (the "Cemex" Plant) which directly borders the east side of ECMLR. Existing mixed development to the north is physically and visually separated from the Triangle site by the raised embankment, bridge and viaduct carrying CTRL.

### 3. Planning Policies

- 3.1 National policy advice in Planning Policy Statement 1 "*Delivering Sustainable Development*" (PPS1), PPS3 "*Housing*" (especially paragraphs 1-10, 27-29 and Annex B) and Planning Policy Guidance Note 24 "*Planning and Noise*" (PPG24) is of particular relevance to these appeals. There is also further guidance in the November 2006 DCLG document "*Delivering Affordable Housing*", Practice Guidance on Strategic Housing Market Assessments, Circular 11/95 on Planning Conditions and Circular 5/05 on Planning Obligations.
- 3.2 The statutory Development Plan for the area includes the London Plan and the Unitary Development Plans (UDPs) for Camden and Islington. At the time the applications were being considered by the Councils, the London Plan 2004 had incorporated the adopted 2006 Alteration, but draft Further Alterations were published in September 2006 and underwent examination in July 2007. These further Alterations were approved and adopted part way through the Inquiry, in February 2008 (ID8.7). The proposals now stand to be judged in strategic terms against these new policies rather than those referred to in Islington Council's decision notice and the Statement of Common Ground (ID8.3), although the difference in those of relevance to the appeals affects their numbering rather than their substance. At Borough level, the Camden UDP (CD4.2) was adopted in June 2006 and is not therefore subject to "saved" policy Direction under the Planning and Compulsory Purchase Act 2004. The Islington UDP (CD5.1) was adopted in June 2002 and is subject to such Direction (CD2.4).

#### *The London Plan*

- 3.3 In the London Plan, policy 2A.5 (ID8.7, page 44) identifies King's Cross as one of 28 "Opportunity Areas" where spatial planning frameworks are to set out a sustainable development programme which, among other things, seeks to exceed the minimum guidelines for housing, promotes social and economic inclusion and co-ordinates cross-boundary working where appropriate. Similar themes are contained in policy 5B.1 (ID8.7, page 297) which establishes strategic priorities for North London, with policy 5B.2 and Table 51.B indicating

increased housing targets for the Opportunity Areas (*ID8.7, page 301*) and paragraph 5.26 (*ID8.7, page 299*) referring specifically to transport accessibility in areas including the King's Cross Opportunity Area. More generally, policy 3A.1 (*ID8.7, page 64*) urges Boroughs to promote policies which (like those for the Opportunity Areas) seek to achieve and exceed housing supply targets.

- 3.4 Of particular relevance to affordable housing, and the specific subject matter of these appeals, are policies 3A.9 and 3A.10 (*ID8.9, pages 76 and 77*). Policy 3A.9 requires Boroughs to set targets for affordable housing in Development Plan Documents (DPDs). These are to take account of regional and local assessments of need and the Mayor's strategic target for 50% of housing provision to be affordable and, within that, 70% to be social housing and 30% intermediate provision, with an aim of promoting mixed and balanced communities. Targets are to take account of the most robust available assessment of housing capacity and of potential sources of supply. Policy 3A.10 urges Boroughs, when negotiating affordable housing in individual private residential and mixed-use schemes to seek the maximum reasonable amount of affordable housing having regard to the policy 3A.9 targets, the need to encourage rather than restrain residential development DPD and the individual circumstances of the site. This is further explained in paragraph 3.52 of the London Plan (*ID8.9, page 77*) which says that Boroughs should take into account economic viability and the most effective use of public and private investment. It suggests use of the development control toolkit developed by the Three Dragons and Nottingham Trent University as one mechanism that might help.
- 3.5 Further strategic policies including 4B.1 4B.2, 4B.3 (*ID8.9, pages 245 - 248*) and 4A.3 (*ID8.9, page 199*) focus on encouraging high standards of urban and building design and promoting sustainable design and construction.

#### *Camden UDP*

- 3.6 Broad policy objectives for the King's Cross Opportunity Area are included in UDP Part I (strategy) policies SKC1-SKC4 (*CD4.2, pages 10 and 11*). These include achieving economic, social and physical integration with surrounding communities and developing a mixed use area integrated with its surroundings and to a very high standard of design, townscape, layout and open space, with employment and housing, including affordable housing, being "priority land uses". Part II (local) policies amplify these objectives, with policy KC4 (*CD4.2, page 170*) saying that the Council will grant permission for development proposals that secure a net increase of at least 1000 housing units (or 1076 gross) (*CD4.2, paragraph 9.46*). Of the first 1000, clause (a) requires that 50% must be affordable, apportioned as 35% social housing for rent and 15% for essential workers and other intermediate occupiers. Over and above these initial 1000 units, clause (b) expresses a target to achieve these same proportions rather than a requirement to do so. Clause (c) seeks a mixture of types, sizes and appropriate densities to meet local and/or London-wide housing needs, including the need for larger, family housing units. Clause (d) touches upon phasing. On a Borough-wide basis policy H2 (*CD4.2, page 43*) establishes, as targets to be aimed at in the negotiation of schemes, the same proportions of affordable housing provision as policy K4 but expresses them differently. It refers to 50% as the overall affordable target, of which 70% (ie 35% of total provision, as KC4) is to be social rented and 30% (ie 15% of

total provision, as KC4) intermediate housing for those on moderate incomes including essential workers. Other Camden UDP policies establish a general development control regime aimed, among other things, at achieving sustainable communities and high quality design. Policy SD7B states that permission will not be granted for development sensitive to noise/vibration in locations with noise/vibration pollution.

- 3.7 Camden has produced a draft core strategy as part of the LDF process and an Issues and Options Paper for its proposed Development Policies DPD but both were, at the time of the Inquiry, only at consultation stage.

#### *Islington UDP*

- 3.8 Affordable housing policy in the Islington UDP (*CD5.1*) pre-dates the London Plan targets. Part II policy H14 (saved) (*CD5.1, page 154*) sets out a general desire to secure a variety of different types of accommodation, including accommodation for single people, large and small families, people with disabilities and people with other special needs. It states that the Council will also seek the provision and retention of a proportion of new housing as affordable units. This proportion is to be the maximum contribution that each proposal can reasonably make to meeting local housing needs, taking various factors into account. Mix of dwelling sizes is the subject matter of policy H15 (saved) (*CD5.1, page 154*) but does little more than repeat the need for accommodation suitable for small households and families from policy H14. With specific regard to King's Cross, this part of the Borough is identified as a "Priority Area" for regeneration in policy E12 (*CD5.1, page 170*), where paragraph 5.2.3 adds that partnership working with Camden London Borough Council already exists. Policy IMP18 (*CD5.1, page 320*) includes a statement that the Council will seek to ensure that the local community receives a fair share of the benefits that proposed infrastructure projects and development in the King's Cross area of opportunity will generate. Explanatory text makes clear that this includes affordable housing.
- 3.9 Islington submitted a draft Core Strategy, for Examination in Public, in March 2007 but this was withdrawn following objection from the GLA and an exploratory meeting with Government Office for London and the Inspector appointed to conduct the Examination.

#### *Supplementary Planning Guidance (SPG)*

- 3.10 The Strategic and Local Planning Authorities have all produced a considerable amount of SPG concerning the provision of housing, affordable housing and the development of the King's Cross area. There is a full summary in the Statement of Common Ground (*ID8.3, pages 46 – 60*), which is subject to the caveat at paragraph 1.4 (*page 1*). The key points are as follows.
- 3.11 The Greater London Authority's (GLA) SPG of November 2005 sets out the GLA definitions of social housing and intermediate housing (*CD3.8, page 42*) by reference to affordability. In brief, the latter is that purchase price must be no greater than 3.5 times the household income limit or 40% of net household income (*paragraph 15.7*). While specific income levels and housing costs are cited, these are subject to up-rating from September 2005. Intermediate housing is required to meet the defined income criteria for a fixed period determined by funding or legal requirements (*paragraph 16.5*). In assessing the viability of schemes, the impact of planning Obligations relating to other

community benefits is acknowledged to be a potential limitation on the affordable housing outturn. The SPG accordingly commends early discussion and agreement with the Housing Corporation, involving affordable housing providers. It adds that where grant is required to achieve a specific outcome, the local authority should seek to confirm grant availability before concluding a S106 agreement with the applicant (*paragraph 18.12*).

- 3.12 For the most part, Camden's SPG defers to UDP policy KC4 on the subject of affordable housing but makes the point that other planning objectives must be taken into account in applying policies to affordable housing and mixed-use development (*CD4.3, paragraph 3.4*). Like the GLA's SPG, it includes local housing cost information (*paragraphs 3.11 and 3.31*). It also makes particular reference to the arrangements for calculating the amount of affordable housing to be provided on sites, distinguishing between floorspace and unit numbers (*paragraphs 3.22 and 3.23*), its financing and procurement (*paragraphs 3.25-3.40*) and dwelling mix (*paragraphs 3.41 - 3.47*). In essence these arrangements seek to provide a high proportion of 3 or more bedroom units in the social rented sector in line with Camden's Housing Needs Survey (*CD4.9*). They also acknowledge the emergence of key worker housing as an important sector of intermediate provision, the role of staircasing, and the circumstances and processes for taking economic assessment into account. Notably, the SPG identifies housing, and affordable housing, as a high priority in the negotiation of planning obligations (*paragraph 32.23 and ID8.3, paragraph 7.21*). The SPG also includes some advice on noise and vibration, mainly by reference to PPG24, and is particularly relevant to the interpretation of UDP policy SD7 (*paragraph 28.13*).
- 3.13 In Islington, SPG (*CD5.5*) was produced in response to its Housing Needs Survey (*CD7.10*) and the London Plan, both of which were produced too late to inform the compilation of the UDP. It ranges across several of the topics considered in the Camden SPG but indicates a preferred mix of dwellings of 30% each for 1, 2 and 3 bed dwellings and 10% for 4 bed dwellings (*paragraph 5.1*). It sets a target of 35% affordable housing on all qualifying residential planning applications (*paragraph 5.3*), with a flexible mix of 25% social rented and 10% intermediate (*paragraph 5.5*). A Guidance Note on affordable housing was produced and adopted by the Council in October 2006 (*CD5.12*) to support its now withdrawn draft Core Strategy. Among other things, this seeks 50% affordable housing (as required by the draft Core Strategy) noting that the Council is concerned that insistence on this figure may result in some schemes being unviable and thus resulting in less housing schemes being developed and thus less affordable housing being provided (*clause (b)*). Where schemes achieve the 50% target, the Note says that the Council will accept a 60% social rented and 40% intermediate mix. In order to encourage family housing, it looks towards calculating the mix on the basis of habitable rooms rather than units (*clause (d)*). It also indicates that any receipts from the subsequent sale of low cost ownership housing will be required to be recycled within social housing schemes within the Borough (*clause (e)*).
- 3.14 Both Camden and Islington co-operated with each other in the production of a planning and development brief for the King's Cross Opportunity Area, published in 2004 following formal adoption by the Councils (*ID8.3, paragraph 7.29 and CD6.1*). This deals with the whole of the Opportunity Area, including

the main station buildings and their respective concourses. The area it covers thus extends, in all, to about 54ha (*CD6.1, plan facing inside of front cover, photograph on page 2 and plan on page 4*) and is thus larger than the Main and Triangle Sites combined. The document includes a record of community involvement in its preparation (*paragraphs 1.5.1 – 1.5.5*) and an outline of the objectives (*paragraphs 1.1.3, 1.4.3 and 1.4.4*). Also, it explains the provenance of the expectation for at least 1000 housing units (in addition to the retention or replacement of 74 originally on the site) in Camden's UDP policy KC4 (*paragraph 2.2.5*) and suggests a capacity for at least 1800 new homes (*paragraph 2.9.5*). Caution is expressed over creating excessive concentrations of affordable housing (*paragraph 2.9.1*) and certain locations are identified as likely to prove inappropriate for residential use because of environmental conditions (*paragraph 2.9.14*). These include facing the open tracks out of King's Cross station and at ground floor level above railway tunnels and abutting main roads. The respective UDP policies for affordable housing are referred to (*paragraph 2.9.16*) with emphasis given to the establishment of a sustainable mixed community (*paragraphs 2.9.15, 2.9.17-2.9.19*). The guidance adds that the Councils will seek to maximise grant and public subsidy in order to optimise delivery of affordable housing, remembering that grant and subsidy may not always be available during the development period. The Triangle Site is specifically identified in the Guidance as sub-area 5. Here, it is stated that

"The Triangle will have a development potential significantly shaped by the existing and new railway lines and by its role as an important part of the York Way street scene, complementing the wider development..... The mixed use development of the Area should continue into the Triangle, where the Councils favour housing, with retail or other uses to enliven the street frontages..... Subject to satisfactory designs and residential amenity being achieved this close to the railway lines, the Triangle could accommodate about 200 one- and two-bed homes in contributing to the overall housing provision in the Area. The site is considered well suited to key-worker homes as part of the range of market and affordable housing." (*CD6.1 pages 68 and 69 and ID8.3, paragraphs 7.39-7.40*).

#### **4. Planning History**

4.1 There is no history of previous planning permissions or refusals for the site relevant to these appeals but negotiations on the scheme have progressed over a number of years, beginning in 2000 and extending for some 4 years before the appeal applications were submitted. The main stages are summarised in the Statement of Common Ground (*ID8.3, paragraphs 4.8-4.57*). The key points are:

- Camden considered its application alongside the proposals for the Main Site at Committee on 8-9 March 2006 (*CD4.5*). Its Committee endorsed the officers' recommendation and resolved to submit the officers' report to Islington both as notice of Camden's resolution to grant outline planning permission for that part of the site falling within Camden, and as formal observations on the part falling within Islington, also seeking resolution by Islington to grant permission in the same terms (*ID8.3, paragraph 4.17*).
- Islington considered the Triangle Site application only (because its administrative area does not embrace any part of the Main Site) at the meeting of its West Area Planning Sub-Committee on 18 April 2006 (*CD5.15*). The officers' report and recommendations effectively mirrored

those of the Camden Officers (*ID8.3, paragraphs 4.20*). The Committee resolved to grant outline permission subject to various matters (*ID8.3, paragraph 4.22*). In particular, the Sub-Committee sought an amendment to recommended condition 26, with a view to limiting the number of residential units on the site to no more than 200, acknowledging that this would alter the development content and require referral back to Camden (to avoid inconsistent decisions) (*ID8.3, paragraph 4.24*) before the applications could be formally determined.

- In consequence of Islington's resolution, the Appellants requested the applications be held in abeyance while a feasibility assessment for the lesser number of units was undertaken (*ID8.3, paragraph 4.25*).
- Having completed that assessment in December 2006, the Appellants advised Islington that a 200 unit scheme could be viable and deliverable subject to variation in the affordable housing offer (*ID8.3, paragraphs 4.27-4.32*). The West Area sub Committee was not content with the affordable housing aspects and deferred consideration of the application while external advice was sought from the Housing Corporation and from Counsel on the affordability package and on the effect of the then newly published PPS3 and the implications of the Council's emerging Core Strategy (*ID8.3, paragraphs 4.36-4.38*).
- The Housing Corporation expressed a preference for the revised affordability package, particularly because the number of larger units would be increased (Camden having insisted that the affordable floorspace on the Triangle Site should not be reduced from that in the applications as originally negotiated and submitted). Counsel's opinion was to the effect that provided there was some recycling provision, the proposed intermediate housing would fall within Government guidance on affordable housing (*ID8.3, paragraphs 4.41, 4.42 and CD5.18*).
- The application was accordingly referred back to Islington's West Area sub Committee on 10 July 2007, again with a recommendation that permission be granted. The application was, however, refused and it is that refusal which is the subject matter of the current appeal A.

4.2 Significantly, the Appellants' indication that a 200 unit scheme would be viable was not made the subject of a formal amendment to the applications as submitted, so Islington's decision and both appeals relate to the 246 unit scheme. Camden Council did not formally reconsider the proposal between its March 2006 Meeting (CD4.5) and its Meeting on 18 October 2007 when its supportive stance on the applications for this appeal was decided (CD4.4).

## **5. The Proposals, Common Ground, and the Accompanying Planning Obligations**

5.1 The scheme drawings are the same for both applications and are those referred to as "parameter plans" within the Revised Development Description booklet (*CD1.4, parameter plans TS001-TS009*). These show, among other things, the application site boundary (defined by red line in drawing TS001), the details of proposed siting (of the building or buildings) and means of access. In essence, the existing site access would be relocated slightly further to the south than at present, to a position directly above the new Thameslink Tunnel and directly opposite a proposed access to the Main Site.

From this lowest part of the site (23.1m AOD), vehicles would be able to enter underneath the main deck level of the proposed development, which the parameter plans show would be set slightly above the existing higher level of the street level access at the southern Randell's Road end (28.1 m AOD). Above the deck level, there would be three main building blocks enclosing a central planted amenity space. Block A would be for market housing. It would face the Thameslink Tunnel and would vary between 61 m and 82 m in height (AOD) (or, illustratively, up to about 17 floors, plus roof and lower and upper ground floor levels). Block B would front onto York Way and would contain retail/business uses at ground floor level, and, built out above this, the proposed affordable housing. This block would be to a maximum height of 55 m (AOD) (or, illustratively, about 8 floors plus lower floors). Block C would back onto ECMLR (and the Cemex plant beyond) and would accommodate the proposed health and fitness centre. It would be up to 41 m high (AOD) (or, illustratively, about 3½ storeys above the lower floors). The residual part of the site, a tapering section of land to the north east of the servicing area, would be reserved as a habitat area.

- 5.2 The proposals raise a wide range of matters which are not disputed between the Appellants and the two Councils. These are identified in the Statement of Common Ground (*ID8.3, appendix C*).
- 5.3 The affordable housing offer is detailed in the two planning Obligations accompanying the proposals (*ID9.17 and ID9.18*). Both of the Obligations take the Form of Agreements rather Unilateral Undertakings. However, while the first (the so-called "All Parties" agreement) is signed up to by the Appellants, Camden and Islington, the second, dealing specifically with affordable housing, has *not* been signed up to by Islington. It has, nonetheless, evolved through discussions between the parties before and during the Inquiry, while remaining within the broad headline numbers set out at the beginning of the Inquiry in the Statement of Common Ground (*ID8.3, paragraph 3.3 and Table including Main Site on page 10*).
- 5.4 The All Parties Agreement (*ID9.17*) covers developer provisions for employment and training, public realm including the proposed habitat area and footway works, design matters, sustainability, green travel, control of retail uses and timing of the provision of affordable housing (*ID9.16*).
- 5.5 The Affordable Housing Agreement (*ID9.18*) establishes that there would be 84 affordable units (representing 34.2% of the 246 total housing units), of which 36 (43%) would be social rented units and 48 (57%) intermediate units of various types. These figures are further refined in Schedules attached to Part 2 of the Agreement, where they are referred to as the "baseline mix". The Agreement includes two alternative baseline mixes (Schedule A Part 2 and Schedule B Part 2), the difference being in the range of intermediate tenures, not its amount, the level of social rented provision remaining constant in both. The latter alternative mix was devised to address concerns expressed by Islington, but the Appellants and Camden prefer the former, for reasons explained in evidence. The Agreement also advances a range of "transfer prices" which affordable housing providers would be expected to pay in order to procure the affordable homes. These are set out in Parts 3 of Schedules A and B. In the event of affordable housing providers being unable or unwilling to pay the transfer prices, then the Obligation provides for a "cascade" arrangement to be triggered, with lower transfer prices related to a

progressively diminishing affordable housing offer. In the worst case scenario envisaged in the Agreement (second stage of cascade), this would “ring fence” 50% of the proposed 36 social rented units and all of the “key worker sub-market rented” and “shared ownership” units. Other matters covered in this Agreement include the Appellants’ subsidy commitments, the arrangements for staircasing and recycling of grant and subsidy and a local lettings agreement (*ID9.16*).

## **6. The Case for the Appellants**

### *General Context*

- 6.1 The King’s Cross scheme is probably the most important regeneration project currently in progress in Central London. It is a scheme of immense potential benefit in environmental, social and economic terms. It has emerged against a background of chronic dereliction and urban decay. For more than 30 years efforts have been made to stimulate and secure the urban renaissance of this part of the metropolis. The Appellant’s proposals have matured through the processes of plan-making and development control over 8 years. Those processes have been going forward in parallel with the final stages of the statutory procedures by which CTRL and its terminus at London St Pancras have been approved (*CD7.1 paragraph 2*).
- 6.2 Islington’s objections, based solely on the affordable housing offer, emerged only at the eleventh hour at the meeting of its West Area Planning Sub-Committee on 10 July 2007 (*CD5.20*). That meeting took place 3 years after the applications had been submitted and its decision to refuse permission was contrary to the advice of its officers and was made notwithstanding Counsel’s opinion on the interpretation of PPS3 advice relative to affordable housing (*CD5.18*). This represented a complete about-turn from the Sub-Committee’s position at its meeting on 18 April 2006, when it was resolved to grant permission subject, among other things, to certain conditions (*CD5.15*) and from its meeting 12 February 2007, when it was resolved to accept changes to the proposed planning Obligation subject to further advice on the affordable housing aspects (*CD5.14*). In the light of the comments made in the judicial review of the Main Site permission sought by King’s Cross Railway Lands Group in May 2007, it is plain that the Council has inadequate reasons for such a volte face (*CD7.1, paragraph 17*).
- 6.3 Scrutiny of Islington’s reason for refusal (*CD5.21*) reveals no support from GLA for the London Plan policy objection (*CD3.5, CD3.6, CD3.7 and ID9.15*), no alleged conflict with Camden UDP policies and no alleged conflict with the Councils’ Joint King’s Cross Development Brief (*CD6.1*). Nor is there any suggestion that the total amount of housing proposed on the site falls short of what the various policies require. GLA, Camden and Islington officers are all content that the proposal accords with the statutory development plan. Only Islington Members take a contrary view and the only Islington UDP policy that they rely upon for support is policy H16, which has not been saved (*CD5.1, page 155 and CD2.4*). No statutory policy has replaced that or emerged in draft.
- 6.4 For the combined Main and Triangle sites, 1946 dwellings are proposed in total, of which 43% would be affordable. The Triangle Site contributes just 13% of the combined site’s housing total and 10% the combined site’s

affordable provision. Intermediate housing, which is the type of provision in most dispute, represents just 6% of the combined site total, while the 12 units to which Islington has raised concern about recycling of grant amount to just 0.7% of combined site provision. The vast bulk of the combined sites falls within the jurisdiction of Camden, with Islington having administrative control over only a small proportion of the Triangle Site itself. Islington's objections should be weighed accordingly.

- 6.5 Although separate planning applications have been submitted for the Main Site and the Triangle Site, there is also no case for considering the proposals separately from Main Site, where the provision of affordable housing has been settled through the development control process and emerged intact from scrutiny in Court (*CD7.1*). The two applications, in the form they take, simply reflect the administrative boundary division between Camden and Islington and in planning terms the proposals should be considered as a single entity. The plan-led approach, in which the proposals have emerged from consensus over a considerable period of time between all the various bodies responsible for decision making in this area, created the degree of certainty necessary for the Appellants to make substantial investment commitments in infrastructure across the combined sites. The single Planning and Development Brief (*CD6.1*) was produced by the two Councils working in unison, there was joint negotiation with the officers of the two Councils, and a single suite of documents was produced by the Appellants to support the planning applications (*CD1.5 - CD1.25*) including a single Environmental Statement (*CD1.16-CD1.20*). For the Triangle Site, Islington had an officer presence on the King's Cross team when the proposals were being consulted on and taken to Committee and there was a large degree of congruence between the officer reports to both Councils (*see, for example, CD5.15, page 3 bullet point 4 and CD4.5, page 5 of 87, paragraph G*). It is wrong for Islington to choose now to regard the Triangle Site as a separate development proposal in its own right and unilaterally withdraw from the consensus that has so painstakingly been built between all the parties. The joint Planning and Development Brief specifically required a set of comprehensive proposals for the Opportunity Area informed by a single masterplan, but with a separate application for the Triangle Site (*CD6.1, paragraph 4.1.4*) and that is precisely what the Appellants delivered in the reasonable expectation that planning permission would be granted.
- 6.6 The Triangle Site is not peripheral to the regeneration of the Opportunity Area, but an integral component of it. The Appellants' proposals for the combined sites represent a comprehensive and integrated arrangement of functions, buildings and spaces. Much of the social, educational and medical infrastructure serving people on the Triangle Site would be found on the Main Site while shops and services proposed on the Triangle Site would likewise form part of the range of facilities available to occupiers of the Main Site. The Brief also refers to the need to extend regeneration of King's Cross into the wider surrounding area (*CD6.1, paragraph 2.2.8*). This means both physical and social linkages as well as a range of housing of different types and tenures, while avoiding excessive concentrations of social housing (*CD6.1, paragraph 2.9.1*). These themes are further developed in the Appellant's own regeneration strategy for the area (*CD 1.15, sections 4.1.1, 4.1.2, 4.1.3 and 5.4*) which accompanied the applications.

6.7 Against all of this general background to the proposals, it would be regrettable if these appeals were to be dismissed, with the result that no housing (including affordable housing) would be provided on the Triangle Site at all. That is not a threat, but a reflection of the real situation the Appellants find themselves in. The housing target for the King's Cross Opportunity Area has already been met on the Main Site, without any contribution from the Triangle Site and the Brief is not insistent upon housing provision here (*CD6.1, pages 68 ad 69*). Given Islington's unexpected volte face on the proposals advanced so far, there can be no guarantee that Islington would find a revised housing offer any more acceptable or, as in these appeals, that Camden would necessarily agree with Islington's affordable housing preferences. This could become a recipe for further protracted discussions and, potentially, appeals while the objective of securing the area's regeneration drops further and further into the distance.

*The affordable housing offer:*

6.8 The London Plan housing targets for Camden, Islington, the sub-region and London as a whole are found in table 3A.1 (*ID8.7, page 66*). The appeal proposals would assist towards meeting those targets. Policy 3A.9 (*ID8.7, page 76*) requires targets specifically for affordable housing to be set in Development Plan Documents (DPDs), based on an assessment of all housing needs and a realistic assessment of supply. The latter point is amplified in bullet points of the policy itself (which lists examples of potential sources of supply), explanatory text (*ID8.7 paragraph 3.48*) and the GLA's Housing SPG (*CD3.8 paragraph 17.4*). It is therefore clear that policy 3A.9 does not require 50% affordable housing to be secured from individual developments and it would plainly be wrong to infer, from Islington's citation of the predecessor of this policy (3A.7) in the reason for refusal, that it does. Indeed, the evidence shows that a high proportion of affordable housing (59% in 2004/2005) might well be expected to come from sources other than planning Obligations negotiated through the development control process (*ID9.3, table 2 on page 32*). This was recognised in the London Plan EiP Panel Report in 2003, which observed that a strategic 50% target for London would, in practice, mean less than 50% was to be achieved from general housing developments (*CD3.19, paragraph 4.51*).

6.9 In similar vein, London Plan policy 3A.10 seeks only the maximum *reasonable* amount of affordable housing from individual planning applications, not the maximum *viable* amount. Rather, the policy cautions that local targets established pursuant to policy 3A.9 are to be applied flexibly having regard to a range of factors. These include the need to encourage rather than restrain residential development, the individual circumstances of the site, individual site costs, the availability of public subsidy and other scheme requirements. The intended process is expanded upon in the GLA's SPG (*CD3.18, paragraphs 18.5-18.7*). Again, it is clear that any implication that policy 3A.10 requires 50% affordable housing from individual sites would be a complete misinterpretation. It may therefore be said that the proposals are entirely consistent with strategic policy objectives, as correspondence from GLA has confirmed (*CD3.5, CD3.6, CD3.7 and ID9.15*).

6.10 Camden UDP policy H2 (*CD4.2, page 43*) says that the Council will "seek to negotiate" on the basis of a target of 50% affordable housing in each development and, like London Plan policy 3A.10, sets out a range of factors

that are to be taken into account. Policy KC4 (*CD4.2, page 170*) effectively requires 1000 homes on the combined sites, 50% of which are to be affordable. With 1700 homes permitted on the Main Site the overall housing requirement under clause (a) of the policy has already been exceeded by 70%, and 750 of these (rather than the 500 required) have been permitted as affordable dwellings. With the addition of the housing proposed on the Triangle Site, 1946 dwellings would be provided in total (nearly double the 1000 requirement) and affordable provision would amount to 834 (or 83% of the 1000 requirement). Provision in excess of the clause (a) levels is not required by clause (b), so it can be said that the quantitative requirements of policy KC4 have been amply satisfied.

- 6.11 Islington has no parallel policy to Camden's KC4, and policy IMP 18 sets out only general aspirations for King's Cross as a whole (*CD5.1, page 320*). Reasoned justification simply affirms that Islington will work with Camden and developers in providing clarity and guidance for the development of the railway lands and to ensure that the north east part of the former railway lands is fully integrated into the future development of the area (*CD5.1, paragraph 13.6.12*). No conflict with that policy is alleged in the Council's reasons for refusal. Policy H16, which is referred to in the reason for refusal has not been saved, but required only 25% affordable housing in any event (*CD5.1, page 155*). That figure is easily exceeded, whether on the combined sites or the Triangle Site alone and it is not suggested that the criteria in policy H14 for judging whether the scheme makes the maximum contribution to meeting local needs are unmet. Notably, Islington's affordable housing SPG (*CD5.5*), with the absence of UDP policy H16, no longer has a parent policy and sets only a 35% target in any event (*paragraph 5.3*). While there is a 50% requirement in Islington's draft core strategy (*CD5.13, policy CS18, page 30*), the strategy has now been withdrawn as unsound and its subsequent metamorphosis into a "guidance note" does not redeem its terminal flaws (*CD5.12, page 2*).
- 6.12 In practice, the Appellants have sought to engage with officers of both Local Planning Authorities, the GLA and other stakeholders (including the Housing Corporation) to optimise affordable housing provision (*ID9.4 appendices 2, 3 and 4*). In achieving 43% on the combined sites (*ID9.3, evidence volume, Table 1 on page 6*) the Appellants have exceeded the London average of 35-40% for the two year period December 2005-2007 (*ID9.3 evidence volume, paragraph 7.6, and Table 3 on page 33*). Setting aside estate renewals, only one scheme in that period achieved 50% and only one other more than 40%. It should further be noted that the main site includes provision for up to 650 student housing units (*CD1.27, paragraphs 22.2.18 and 22.2.20*). While this does not qualify as affordable housing (*CD3.8, paragraph 16.1*), it takes pressure off the market stock, especially low cost market housing. The Appellant's proposals thus perform well both against relevant policy requirements and typical outcomes.
- 6.13 Much has been made by Islington of alleged inadequacies in the financial appraisal of the scheme (*ID10.3, appendices volume, appendices 1 and 2*). In urging Boroughs to seek the maximum reasonable amount of affordable housing, London Plan policy 3A.10 requires account to be taken of individual site costs, but only as one of a range of other factors to be considered. More specific reference to the subject is found in explanatory text at paragraph 3.52

(ID8.7, page 77) which says Boroughs should take into account economic viability and the most effective use of private and public investment, including use of financial contributions. It then refers to the “development control toolkit” developed by the Three Dragons and Nottingham Trent University as one mechanism that may help. The GLA’s Housing SPG makes clear that there is no requirement to use this specific toolkit (CD3.8, paragraph 18.14, page 53) and there is no suggestion in the policy that economic appraisal is for developers to undertake. Rather, the implication is that this is the Boroughs’ responsibility (CD3.8, paragraphs 18.12-18.13). GLA, Camden and Islington have never requested a “toolkit” appraisal from the Appellants. Instead, independent analysis was commissioned by Camden from DTZ for the Main Site, the results of which are before this Inquiry in the form of a briefing note (CD4.6).

- 6.14 The DTZ appraisal was based on a financial model developed specifically for the King’s Cross development. DTZ themselves identified the variables to which the financial viability of the proposed development is most sensitive and reached a range of conclusions (CD4.6, section 4.0). A strength rather than a weakness of the DTZ approach is that it takes account of changes in economic and other circumstances over time. Among other things, it identifies affordable housing provision as a significant development cost, any increase in which will impact adversely on the ability of the development to bear costs associated with the provision of other planning benefits. Infrastructure costs of some £100,000,000 are identified, and the appraisal notes that much of the infrastructure will need to be developed for the Main Site, before development on the Triangle Site is likely to commence. It concludes that 44% affordable housing is likely to be close to, or at, the maximum within the overall viability of the residential element of the King’s Cross Main Site (CD4.6, Section 4, seventh bullet point). The appraisal was re-visited by DTZ at Camden’s request in 2007 specifically for the Triangle Site (CD4.7), when it was noted that the need for early investment in infrastructure applies here too. It further observes that the financial situation was likely to have deteriorated since the original appraisal in 2006 (CD4.7) but nonetheless records DTZ’s view that 42.8% is at, or close to, the maximum level of affordable housing that the development could bear before this element became unviable (CD4.7, section 4).
- 6.15 DTZ’s appraisal has been accepted both by Camden and GLA. It is sound advice because it is independent, it is from a front rank practice already familiar with the King’s Cross Railway Lands, it is cautious and it is site specific. Conversely Islington has not followed any of the policy advice it now seeks to invoke against the appellants proposals and has not produced any evidence to show that the DTZ conclusions are incorrect (ID9.19, paragraphs 166-189).
- 6.16 In sum, Islington has demonstrated a serious misapprehension of what the London Plan requires, both in terms of the affordable percentage and the need for economic appraisal, and it is that misapprehension which lies at the heart of its objection to the Appellants’ proposals.
- 6.17 There would be a broad range of dwelling sizes across both the site as a whole and the Triangle Site itself (ID9.3, evidence volume, Table 1 on page 6 and appendices volume, appendix 6 and ID9.17 Baseline Mixes). This is not an arbitrary formulation but derived from officer level discussion with the two

Councils informed by the respective Housing Needs Surveys (*CD4.9 and CD7.10*). Across the combined sites, there has been particular regard to the need to provide for specific social groups, particularly those in need of social rented accommodation and those who require specialist rented housing such as the elderly (*D4.2, policy KC4, clauses c) and d) and ID9.3, evidence volume, paragraph 4.8*). In consequence, almost 40% of social rented accommodation on the combined sites will have 3 or more bedrooms, which is a significant achievement given the location, nature and density of the scheme. The Main Site will have 88 special needs social rented homes. The Joint Brief, however, indicates that the Triangle Site is best suited for one and two bed homes (*CD6.1, page 69 and CD4.5, paragraph 1.9.17*). Islington UDP policy H15 requires a mix of both small and family accommodation (*CD5.1, page 154*), a requirement that is easily met on the combined sites. While reasoned justification for policy H15 adds that the Council may request information from applicants to help assess the contribution to meeting housing needs that a particular scheme might make (*CD5.1, paragraph 4.3.6*), it has not done so and Islington officers have never suggested a different mix for the Triangle Site alone, or sought reconfiguration of the affordable floor space in a way that might deliver a greater number of larger units for families, but at the expense of social rented numbers.

- 6.18 The proposed provision of all of the affordable housing in Block B on the Triangle Site has been influenced by practical considerations. These relate to the management of the buildings and the imposition of service charges, both of which present difficulties when owner occupiers and tenants share common areas. This will not compromise the aim of integration – there would be no material differences between the buildings for market housing and for affordable housing. This approach is supported by the London Plan (*ID8.7, paragraph 3.55*) as well as by Islington officers (*CD5.15, second paragraph on page 44*).
- 6.19 An assessment of socio-economic and other characteristics of the area surrounding the combined sites was undertaken in order to establish the credentials of a mixed and balanced community (*CD1.18, part 12, section 12.4*). Data was collected at various spatial levels (*ID9.3, evidence volume, paragraph 6.4*), including the Central Impact Zone (CIZ) and Wider Impact Zone (WIZ) referred to in the Environmental Statement (*ID9.3, appendices volume, appendix 4*). This revealed:
- Very high levels of deprivation
  - High unemployment levels
  - High proportions of lone parent households
  - Higher levels of children and lower levels of older people
  - Concentrations of social rented accommodation
  - Overcrowding and lack of family housing
  - Extremes of poverty and wealth
  - Very limited housing choice
  - A seam of middle-income earners

- A transient population
- 6.20 In short, the antithesis of a sustainable, mixed and balanced community (*ID9.3, evidence volume, pages 27, 28 and 29*).
- 6.21 While the provision of social rented accommodation was an identified priority for the scheme, emphasis was placed on providing the right type and mix of social rented housing rather than the need to maximise the headline number. The formulation of this part of the affordable housing offer is explained in the Environmental Statement (*CD1.18, paragraphs 12.7.73-12.7.75*) and was undertaken in consultation with Registered Social Landlords. Notably, in recognition of an identified need for family housing for rent, 10 of the 13 proposed 3 bedroom units on the Triangle Site would be social rented units (*ID9.3, paragraphs 4.7-4.9*).
- 6.22 The need for social rented housing to address Camden and Islington's housing waiting lists would thus be recognised, but such provision would not address the wider needs of London (for example, for homes for "key workers") or the identified shortcomings of the local neighbourhood. In particular, there is a danger that in simply concentrating more social rented housing in an area already dominated by it, further disadvantage and polarisation could be brought to new and existing communities. The combined sites are large enough to create an "intermediate" housing market in their own right (*CD13.8, paragraph 18.9*) which, alongside existing local housing stock, would act as a catalyst for positive economic and social changes in the area as a whole. This would be by (*CD1.15, section 5.4 and CD1.18, paragraph 12.7.85*):
- Creating a local "ladder" of housing tenure choice for existing residents currently locked into the social housing sector
  - Making new housing provision for low and middle income workers, to the benefit of public services and others needing to attract and retain staff in Camden, Islington and other central London locations
  - Introducing a new fluidity that could stimulate similar housing provision in neighbouring areas and more widely
- 6.23 With these aims in mind, the Appellants and the landowners involved will retain an interest in the combined sites throughout the implementation of the scheme and are forming a collective ownership structure committed to long-term management. A Local Lettings Plan, covering both social rented and intermediate housing, is included in the proffered Planning Obligation
- 6.24 The proposed tenure split between social rented and intermediate units would be 64:36 on the combined sites, with 67:33 being the proportions on the Main Site and 43:57 on the Triangle Site alone. It is, however, more appropriate in this case to consider the proportions in terms of habitable rooms (*CD3.8, paragraph 18.10*), when the figures become 74:26, 77:23 and 53:47 respectively. The out-turn on the combined sites would be better than the London average of 62:36, where total affordable housing reaches only 30% of all new housing provision (*CD3.10, page 31, year 2005/2006*). In that same year, Islington achieved 67% affordable housing, but the split was 37:63, almost the reverse of what the London Plan target seeks.

- 6.25 The Triangle Site in isolation does not meet the London Plan 70:30 target but it is inevitable that figures will vary from phase to phase across the combined sites. This is not inconsistent with the GLA's SPG, which affirms that tenure mix should be determined on the individual circumstances of the case (*CD3.8, paragraph 18.8*). The proposed mix has been derived having regard to the findings above and to the policy targets in the relevant development plans. It follows analysis at neighbourhood level, rather than across the Boroughs or London as a whole (*CD3.8, paragraph 18.9*). The relatively high proportion of intermediate units responds to the GLA's Housing SPG (*CD3.8, paragraph 18.9*) and to the need to dilute the present polarisation in the local housing market between social rented and market housing. Camden recognised that it is essential that the new neighbourhoods (including the Triangle Site) are anchored with a broad range of new residents and that this would be reflected in the more general mix of affordable tenure type than strict adherence to a 70:30 mix would imply (*CD4.5, paragraphs 1.9.63 and 1.9.64*). Precisely the same words are used in the Islington officers' report (*CD5.15, page 43 under heading "tenure mix"*). It is entirely inappropriate and inconsistent with the Development Brief (*CD6.1, paragraph 2.9.1*) for Islington to now adopt the stance that a 70:30 mix for the Triangle Site is immutable.
- 6.26 PPS3 makes clear that intermediate affordable housing does not exclude homes provided by the private sector or provided without grant funding (*PPS3, Annex B*). Significantly, the National Affordable Housing Programme now enables private landlords to bid for Housing Corporation Grant Funding (*CD7.4, page 1*) and it is an express aim of the Corporation's affordable home ownership programmes to work in partnership with the market to assist many more households to realise their home ownership aspirations (*ID9.3, appendices volume, appendix 3*). The proposed development carries this forward with a suitably robust intermediate affordable housing offer on the Triangle Site, where four distinct products, similar to those on the Main Site, are proposed:
- (a) Key worker sub-market rented units (*ID9.3, evidence volume, paragraph 4.14*):
- 6.27 Twelve dwellings in this category would be offered on the Triangle Site, representing 25% of the intermediate housing to be provided. These would be transferred to a Registered Social Landlord and would be made available at 20% below open market rent. This is a type of provision having high priority in the draft of the Mayor's Housing Strategy 2007 (*CD3.4, paragraph 113*).
- (b) Shared ownership units (*ID9.3, evidence volume, paragraph 4.15*):
- 6.28 This category would again represent 25% of the intermediate housing offer on the Triangle site, a further twelve dwellings. These also would be transferred to a Registered Social Landlord, who would make them available for sale at 40% of market value with rent on the unsold equity capped in the planning Obligation at 2%, which compares favourably with the absolute cap of 3% under the Housing Corporation's New Build Homebuy scheme (*CD7.4, paragraph 102*).
- (c) Shared equity units (*ID9.3, evidence volume, paragraphs 4.16 and 4.17*):
- 6.29 The difference between these proposed twelve dwellings and the shared ownership units is that they would be provided without Housing Corporation

subsidy. Instead, they would be sold at an average of 50% of market value (ie at higher initial price), but with the Appellants retaining the unsold equity. This means that the purchaser would not pay rent for the unsold equity, the saving from which may effectively be regarded as contributing to mortgage repayment on the part purchased. Should a purchaser choose to buy additional equity shares (ie to staircase towards full ownership), the receipts for a period of 15 years from initial provision of the unit would be placed in a designated account for investment in affordable housing in the development. If staircasing to full ownership, a Registered Social Landlord would have the opportunity to buy the unit back into the affordable housing stock. In the Appellants' view, this category of intermediate affordable housing provides a good opportunity for purchasers to become home owners while promoting greater responsibility for the local environment, more permanence in the local population and a stronger sense of community.

(d) Right-to-Buy Homebuy units (*ID9.3, evidence volume, paragraphs 4.18 and 4.19*):

- 6.30 This final tranche of twelve units (again 25% of the intermediate affordable housing offer) would target tenants of existing social rented accommodation in the area who have qualified for right to buy. Instead of exercising the option to buy their existing home, however, these units would provide the choice of moving into home ownership on the Triangle Site instead. Their provision is not reliant on public subsidy. Instead, the purchasers would receive an Appellant-funded non-repayable discount of £16,000, which is equivalent to the discount available through right to buy and a saving of that amount to the existing social rented housing provider (in this case, likely to be the respective Councils). They would also receive a 30-40% discount in the form of an interest-free Appellant-funded loan, to be repaid on the sale of the property. This latter discount is effectively the same arrangement as the Government-backed Open Market Homebuy product (*CD7.16*). This form of intermediate provision emerged from discussion with Camden officers and it is advantageous in adding to the intermediate affordable housing stock while leaving the original social rented accommodation available to other families in housing need. It is misleading for Islington to rely on RSL data to show limited demand in the King's Cross Area from tenants of existing social rented accommodation to exercise their right to buy. This is because Islington and Camden Councils retain considerable social rented stock of their own in the area, so RSL figures alone are unrepresentative.
- 6.31 There can be no doubt that these various forms of provision fall within the definition of affordable housing for the purposes of the London Plan (*CD3.20*). In advancing them, the Appellants have striven to produce a range of housing choices closely attuned to local needs and capable of creating a sustainable, mixed community.
- 6.32 They would also be affordable by local people. The London-wide upper income threshold for intermediate housing, established by GLA on the basis of the ratio between income and lower quartile house prices and updated annually, stands (as at February 2007) at £52,500 (*CD3.4, paragraph 109*). Up to that threshold, the draft of the GLA Housing Strategy gives priority in subsidising the purchase of intermediate housing to those within the lower half of the income range (ie those with incomes of between £16,900 and £35,599) (*CD3.4 paragraph 113, clauses 4 and 5 and ID 8.7, paragraph 3.37*) and it

may therefore be assumed that grant-free subsidy-free products will be targeted at those in the upper half (£36,000-£52,500) (*CD3.4, paragraph 116*), but they would still be affordable homes.

- 6.33 In all cases it has been assumed that 40% of net household income will be spent on mortgage, rent and service charges and that the income multiplier for mortgage purposes will be  $3\frac{1}{2}$  (*ID8.7*). There will inevitably be key variables, such as actual sale prices, mortgage interest rates, repayment periods, service/estate charges and deposits. However, discussions have taken place with the Housing Corporation (*ID9.4 appendix 2*) and the Corporation's affordability calculator produced by Tower, Metropolitan and Moat Housing Associations, who market most of London's intermediate housing shows the Appellant's assumptions to be reasonable (*ID9.4, appendices 1, 3, 4 and 5*). Moreover, all of the RSLs who have tendered for the Main Site phase 1 have considered the transfer price of the shared ownership and key worker sub-market rent dwellings to be tender-affordable (*CD9.19, Table 1, page 68*). In sum, it can be seen that the proposed range of intermediate products will increase housing choice, improve the range of affordability and widen the opportunities for home ownership for households with earnings of about £30,000 and above.
- 6.34 Islington has argued that the proposed Shared Equity and Right to Buy Homebuy units do not fall within the PPS3 definition of affordable housing because subsidy would not be recycled for alternative affordable housing provision. That reason can no longer stand now that option B has been tabled because, under that option, these categories of intermediate housing would be merged and transferred to the control of a Registered Social Landlord rather than be delivered directly by the Appellants (*ID9.17*). It can be triggered by planning condition if the Secretary of State so desires (*ID9.9, appendix E*).
- 6.35 Nevertheless, it is the Appellant's view that option A is more versatile, fits better with the scheme as a whole, and is much more efficient and sustainable in the longer term. Counsel's advice to Islington on 14 May 2007 endorsed the recycling arrangements under this option as compliant with PPS3 (*CD5.18*). Both options would deliver 84 affordable units, 36 of which would be social rent and 48 intermediate. The difference between the two options affects only 24 of the latter units.
- 6.36 Spending of recycled receipts on "alternative affordable housing provision" in PPS3 (appendix B) does not stipulate that this must be on increasing the overall level of affordable housing delivery or replacement of stock lost to removal of affordable housing restrictions. RSLs interpret this requirement flexibly, with some being spent on management costs and corporate overheads (*ID9.3, paragraphs 8.37-8.38*). Recycling in Option A of the Affordable Housing Obligation is site specific (recycled funds would be spent within King's Cross combined sites, not anywhere that an RSL happens to operate). Such spending would thus be on meeting local needs, as well as contributing towards wider policy targets. In comparison, Option B would provide less choice of tenures and allow continued loss of stock through right to buy. There are further deficiencies with option B (*ID9.4, Table 3, page 17*).
- 6.37 Islington acknowledges that the Appellants' intermediate affordable housing offer is similar to the range of Government schemes currently available (*ID10.5*). However, Social Homebuy is the only Government sponsored

provision that requires the full receipt from sales to be recycled into replacement affordable housing (*ID10.5, paragraph 1.5*). These receipts are to be held in the Disposal Proceeds Fund or Recycled Capital Grant Fund of the participating affordable housing provider. The "Designated Account" referred to in the proffered planning Obligation mirrors this. For New Build Homebuy (including the First-time Buyer Initiative), when a unit is sold, only the original grant (not as with the Appellants' proposals) has to be repaid to the Housing Corporation. Rental income from unsold equity is retained by the affordable housing provider, whereas for 15 years under the Appellant's proposals this, too, would be available for recycling. Uplift in value is effectively shared with the Government (or, in the appeal proposals, by the Appellants) in return for the risk on investment. On "Open Market Homebuy", there is no requirement under the Government's scheme to recycle equity rent receipts, which represent a commercial return to the participating developer (*ID9.14 paragraphs 13-15*). The Appellants' proposals for Shared Equity and Right to Buy homes do not require Housing Corporation Grant and incorporate equivalent, if not more favourable, recycling provisions all of which are consistent with PPS3 Annex B requirements.

#### *Noise and Disturbance*

- 6.38 The Appellants have addressed the issues relating to microclimate raised in the Secretary of State's Direction (*see paragraph 1.2 above*) in the further Environmental Information (*CD1.27A, Volume 6, Part 27*), and no further points are taken by any party on this. It may therefore be concluded that there will be no unacceptable wind effects either on, or as a consequence of, the proposed development of the Triangle Site.
- 6.39 No objection on noise or disturbance grounds has been made by either of the Borough Councils. The principle of residential development is accepted in the joint Development Brief (*CD6.1, page 69*), there have been no objections from the respective Environmental Health Officers (*CD5.15, pages 48-50 and CD4.5 paragraph 1.9.31*), a stance fully supported by the Environmental Statement (*CD1.16, Part 5.9, CD1.19, Part 17 and CD1.27A, Part 26*). Evidence from third parties on the subject should be considered in the light not only of this but also the Appellants own noise evidence, produced by an extremely experienced and well-qualified expert (*ID9.5 and ID9.9*).
- 6.40 In order to establish baseline noise levels for the combined sites, measurements have been taken at a number of locations (*CD9.5, appendix CEE3*). Two of these were on the Triangle Site and were selected to assess traffic noise on York Way and noise from the ECMLR. An additional survey was undertaken on 12 December 2007, among other things to identify the effect of the then newly operational CTRL (*CD1.27A, paragraph 26.1.13*). In order to assess the impact of noise from the yet to be constructed Thameslink line from ECMLR to St Pancras (*refer to paragraph 2.1, above*), a noise survey was also undertaken on the Gatwick section of Thameslink (*CD1.27A, paragraph 26.1.16*).
- 6.41 The conclusions from these surveys are that part of the west façade of Block B falls within PPG24 Noise Exposure Category D ("planning permission should normally be refused") but that the bulk of the noise sensitive frontages are within NEC C ("planning permission should not normally be granted"). However, for the part of the Triangle Site within NEC D, noise levels are at

most only 0.7dB in excess of the threshold between NEC C and NEC D. PPG24 allows Local Authorities to vary thresholds by up to 3dB where appropriate (*Annex 1 paragraph 2*) and, in NEC C, acknowledges that noise sensitive development is acceptable provided adequate attenuation measures are in place. Indeed, if traffic passing on York Way does not stray into the cycle lane marked in the carriageway, it is likely that the separation distance would be sufficient for all of this frontage to fall within NEC C rather than NEC D. Quite simply, a difference of 0.7dB is impossible for the human ear to distinguish. The level of attenuation required is, in any event well within the bounds of modern technology to achieve. Such technology has advanced considerably since PPG24 was published (*CD9.10, paragraph 14*). It is the Appellants' case that acceptable noise levels can be achieved in habitable rooms with windows in the northern façade of Block A and the western façade of block B by use of acoustic glazing in combination with an alternative attenuated ventilation system.

- 6.42 Potential vibration effects from trains passing through the new Thameslink Tunnel are not unique to the Triangle Site. If suitable mitigation cannot be provided during construction of the tunnel itself, then it can be provided within the buildings on site and required by planning condition. This was the approach taken on the Main Site and a similar approach is appropriate here.
- 6.43 Responding to the Inspector's adjournment note (*ID8.8*), of the three concrete batching plants operating in the area, noise from two will effectively be screened by intervening development on the Main Site and only one, the Cemex Plant, is of concern to the Triangle Site Development (*ID9.9 paragraphs 3.1-3.11 and appendix B with site plan at Figure 1*). The Cemex Plant stands on land owned by the Secretary of State for Transport and managed by London and Continental Railways. Cemex has a lease extending to 2015, but there are various clauses allowing this to terminate sooner. The noise surveys indicate that train noise is louder on the Triangle Site than noise from the batching plant in any event (*ID9.9, Appendix B, paragraphs 4.6 and 4.7*). The same applies to noise from the railway alarm bell. The third parties accepted at the Inquiry that noise from the Belle Isle transformer was insignificant and thus not at issue. In essence, therefore, there is nothing that mitigation measures for road and rail noise would not adequately address.
- 6.44 In conclusion, the Government Office for London's letter of 11 April 2006 praised Camden's handling of the Main Site application (*ID11.8*) on affordable housing and other matters (*ID9.12, paragraph 6*). Officers of both Councils and Camden Members have pursued a similar exemplary approach in consideration of the Triangle Site (*ID9.19, paragraph 399*). There is no strategic objection to the proposals and the Islington's objection, at Member level, is based on a misunderstanding and misapplication of PPS3 advice. Overall, the design of the affordable housing offer represents a paradigm of the approach developers are urged to take by national and strategic policy, and the proposals are acceptable in this and all other respects.

## **7. The Case for Camden London Borough Council**

- 7.1 London Plan Policy 3A.9 sets the London-wide strategic target for affordable housing, which is guidance to local authorities on how to prepare their UDPs and LDFs. Policy 3A.10 is the policy that enables the London Mayor to exercise his powers of Direction when applications of strategic importance are referred

to him (*ID9.8*). Camden UDP policy H2 reflects the policy 3A.9 50% target, as does KC4. KC4 is site specific so must be the most relevant (on Camden's side of the boundary) to judge the application. Policy KC4 sets a minimum net gain of 1000 dwellings, of which 50% must be affordable. Beyond that first 1000 dwellings, 50% becomes an affordable housing target in respect of which other factors will be taken into account. These include the wider regeneration needs of King's Cross and economic circumstances. None of these factors is held by the policy to be more important than any other. Policy H2 provides a guideline that the split between social rented and intermediate categories of affordable housing should be 70:30. Clause (b) of policy KC4 applies the 70:30 guideline to the King's Cross area, but only within the context that there is no policy requirement to provide more than 1000 dwellings in the first place. Every unit above the initial 1000 is over and above what the policy requires, whatever the form of tenure may be.

- 7.2 In judging conformity with the development plan, it is Camden's view that the King's Cross Opportunity Area should be regarded as a single entity. This reflects the formulation of policy KC4, which treats the area as a whole, and the Joint Planning and Development Brief which explicitly sought a comprehensive masterplan (*CD6.1, paragraph 1.1.2*). This is the approach taken by both Camden and Islington during officer-level negotiations and, had it not been for the position of the administrative boundary between the two Councils, Camden would have expected the Triangle Site to have been embraced within a single application for the Combined Sites (*CD4.5, paragraphs 1.7.2 and 1.7.5 and CD5.15, pages 38 and 42*). The same approach has been taken by the GLA (*CD3.6*). This is why, for example, the majority of family housing has been provided on the Main Site closest to open space and schools, while mainly smaller one and two bedroom units are proposed for the Triangle Site. Islington is wrong to argue that since permission has been granted for the Main Site, the community infrastructure and other benefits provided on that site can be divorced from requirements on the Triangle Site. One of the core purposes of the development plan (and related SPG, such as the Joint Brief) is to provide certainty for developers. The Appellants have been encouraged by both Councils to bring their proposals forward in good faith accordingly. In these circumstances it is surprising that Islington's evidence has focussed on figures for the Triangle Site alone, has not referred to the different stance now being adopted, or provided any explanation for it. This is a complete departure from Islington's position during officer level discussions and from everything that had gone before.
- 7.3 In practice, there is no strategic policy objection to the proposals. This was made clear by the GLA at application stage (*CD3.5*) and in the London Mayor's later letter, which confirms that the GLA would not have directed refusal and that Mr Dolphin was authorised to sign on Mayor's behalf (*ID9.15*). There has also been no suggestion that the proposal fails to accord with UDP policy KC4. The Combined sites will provide 1946 dwelling overall (well in excess of the policy KC4 1000 requirement), of which 834 (more than the policy requirement for 500) will be affordable. Of the latter, 536 will be social rented units (more than the policy requirement for 350) and 298 will be intermediate (more than the 150 that policy requires). Even if the cascade is triggered, on a worst case there would still be 566 affordable units on both sites in total.

- 7.4 It is acknowledged that there is a pressing need for affordable housing, both in Camden and in London as a whole. The combined sites will make a significant contribution to meeting that need within Camden. However, the regeneration proposals for the King's Cross Opportunity Area are being promulgated on the basis of mixed use development, Camden having expressly considered and rejected an entirely residential-led solution (*CD6.1, Section 2*). The wider benefits provided by the proposals for the Opportunity area include:
- a full range of community, health, education, cultural, assembly and leisure facilities;
  - retention and refurbishment of 20 listed buildings and structures;
  - relocation of the dismantled Gas Holder Triplet and re-use for housing;
  - substantial new infrastructure, including 3 new bridges over the Regent's Canal;
  - significant new areas of public realm (totalling 40% of the completed development), including 10 major public spaces;
  - generation of 25,000 new jobs.
- 7.5 Camden has had regard to economic viability but only as one of many factors influencing the form and content of development here. The DTZ advice (*CD4.7*) was that the affordable housing provision (on the combined sites) is at or close to the maximum that the development could bear. That advice is from a reputable and recognised market leader in this type of analysis, it is based on a bespoke model with input from relevant experts and is a careful and detailed piece of work. It cost Camden something in the order of £70,000 to have produced, which is far more than the Three Dragons "toolkit" type of exercise referred to in the London Plan. Despite referring to various limitations, the report presents clear and unequivocal conclusions. It is unrealistic of Islington or other objectors to expect anything more accurate for a project of this magnitude and for a many-faceted development extending over a long period of years.
- 7.6 In judging the importance attaching to affordable housing relative to other demands upon the proposed development, it must be remembered that the primary objective for the King's Cross Opportunity Area is regeneration. Such regeneration may be expected to be "conservation-led" both in relation to the keystone project at St Pancras Station and the many historic artefacts in the area. The intention for there to be a mixed use scheme does not imply that housing, or affordable housing, will be the only priority. The structure of policy KC4 gives some indication of the essential level of housing (1000 homes), above which additional housing is welcome but not a requirement.
- 7.7 The Combined sites would provide a 64:36 social rent:intermediate mix, which is sufficiently close to the 70:30 policy target for any shortfall to be insignificant. The Mayor's SPG (*CD3.8*) commends calculation on the basis of habitable rooms, whereupon the mix becomes 74:26, in excess of the target. The joint brief suggestion that the Triangle Site is best suited to one- and two-bedroom flats is indicative that development here will be relatively high density and the Mayor's SPG further states that such schemes may justify a

higher proportion of intermediate provision than the norm (*CD3.8, paragraph 18.8*). This would be consistent with the Joint Brief, which advises (*CD6.1, page 69*) that the Triangle Site is well suited to the provision of key-worker intermediate homes. Even Islington's own officers (who variously live and work in the area and know the locality extremely well) advised that the desire to achieve a 70:30 split needs to be balanced against the interests of maintaining a balanced and sustainable community (*CD5.15, page 43*).

- 7.8 On recycling of receipts, Camden regards Option B as both unnecessary and undesirable. It is an unreasonably strict interpretation of PPS3 to require affordable housing to be affordable in perpetuity. Even social rented housing is subject to right-to-buy provisions. The Option A provisions would remain affordable unless and until the occupiers exercise their right to staircase out. PPS3 expressly includes "Homebuy" within the definition of affordable housing so it cannot be held that, simply because an individual unit may cease to be part of the affordable housing stock at some indeterminate stage in the future, it falls outside the definition of affordable housing at the outset. It is also not a requirement of PPS3 that all affordable housing must include an element of public subsidy. Indeed, providing affordable housing without recourse to public subsidy (and thus freeing up funds for use elsewhere) should be encouraged rather than condemned. Under option B it is only the element of public grant that needs to be recycled. Under option A, however, additional receipts from rent or sale (all staircasing receipts) would be reinvested for 15 years, ensuring all of the benefit of uplift is reinvested. Moreover, receipts captured within the 15 year period may continue to be recycled well beyond that period and the benefit would then remain until the subsequent occupier of the alternative unit chooses to staircase out. Until occupiers and their successors have staircased to 100% ownership, sale of the units concerned would be at a discount from market value. Even after that, Affordable Housing Providers would still have the opportunity to buy back the properties. Islington's criticism of "Right to Buy Homebuy" also ignores the benefit of regaining the social rented unit being vacated, the saving to the Council of the £16,000 right to buy discount and the recycling of receipts from the new unit under the provisions of the planning Obligation.
- 7.9 The affordable housing offer, of the same type as advanced under option A, was found to be entirely satisfactory on the Main Site by Government Office for London (*ID9.12*). While that finding was made in the context of the former PPG3, the concept of affordable housing being "permanently affordable" (if that phrase is properly applied) is not new. It was included, for example, in Camden UDP paragraph 2.17. It would be inconsistent and unfortunate if a different view on the Triangle Site was now taken to that expressed by GOL with regard to the Main Site. As proposed, the offer would create a ladder of housing choice offering a mix of affordable tenures allowing residents in social housing stock to move locally. It would encourage low and middle income earners to move to jobs in Camden and Islington and help public services to attract and retain staff. It would help stabilise transience in the local population by providing choice in the housing market and introduce a new fluidity that could stimulate the local and wider housing market as a whole. Option B should not, therefore, be triggered.
- 7.10 In response to third party concerns, Camden recognises that the local noise climate is one where the Council's policies would normally indicate that

planning permission should be refused. Camden is, however, an inner London Borough and thus inherently noisy relative to most other parts of the country. The choice in Camden is between addressing challenging sites like the Triangle Site through suitable mitigation measures, or forgoing the opportunity to provide housing altogether. In this case, officers and Members are satisfied that an adequate level of amenity can be provided within the proposed residential units through mitigation measures. While Camden UDP policy SD7 is expressed with much greater assertion than its predecessor, this was simply because of the need to avoid use of the word “normally” which, when included in policy, prevents the operation of Section 38 (6) of the Planning and Compulsory Purchase Act 2004 – effectively, its use makes all development policy compliant.

- 7.11 In sum, the proposals for the Triangle Site evolved from a lengthy period of consultation, discussion and negotiation (*CD1.6, 1.7 and 1.8*). Its content was informed by the Joint Development Brief, which is a corporate document signed up to by Camden and Islington Members alike and endorsed by them, and it should not be lightly set aside. That would be the antithesis of everything that the planning system strives to achieve. The proposals should be regarded as a welcome and entirely acceptable contribution to the regeneration of King’s Cross, and should accordingly be permitted.

## **8. The Case for Islington London Borough Council**

- 8.1 There is no dispute that there is a need to secure a substantial increase in the supply of affordable housing in London (*ID8.9, paragraph 3.41*). The London Plan, the Camden UDP (*CD4.2, policies H2 and KC4*) and the King’s Cross Development Brief (*CD6.1*) all establish targets for 50% of new housing provision to be affordable, of which 70% is to be social rented and 30% intermediate forms of tenure. The Appellant Company did not object to the formulation of Camden UDP policy KC4 at the UDP Inquiry and may therefore be said to be content with these target figures, yet the proposals would provide only 34% affordable housing units on the Triangle Site (or 26.7% if expressed in terms of floorspace) and also fall short of the policy targets for social rented:intermediate mix.
- 8.2 While neither Islington UDP policy IMP18 nor policy H14 have a specific target for affordable housing provision beyond that in the latter policy seeking the maximum contribution that each proposal can reasonably make (*CD5.1, page 154*), the fate of Islington’s draft Core Strategy is especially pertinent. This Strategy sought to secure 50% affordable housing, but with a 60%:40% social rented:intermediate split to avoid the risk of compromising the viability of schemes and thus of both housing and affordable housing delivery (*document 5.13, policy CS18 and explanatory text on page 30*). The GLA objected to this approach on the basis that it was not in conformity with the London Plan (*CD5.16*), in consequence of which the Core Strategy was withdrawn after its submission for formal examination. The London Mayor was highly critical of the Council in an ensuing press release (*CD3.11*). There can therefore be no doubt about the strategic importance attaching to the London Plan targets. There would be no point in expressing these in London Plan policy 3A.9 if it was not expected that the Boroughs would pursue them vigorously in applying policy 3A.10 to individual schemes (*ID8.9, pages 76 and 77*).

- 8.3 The targets are also based on firm evidence of need, as set out in the GLA's Housing Requirements Study 2004 (*CD7.11*) and in Housing Needs Surveys undertaken by the Boroughs (*CD4.9 for Camden and CD7.10 for Islington*). Both the Housing Needs Surveys identify the limited utility of anything other than social rented housing in meeting local affordable needs (*CD4.9, paragraph 9.7 and CD7.10, paragraph 11.7*). Islington's Survey in particular suggests that that the Borough's annual requirement for social rented housing would amount to over 96% of new provision, while shared ownership would be just 3% if local housing need is to be met (*CD7.10, table 11.8*). Government Office for London and the GLA have agreed (*ID8.10*) that the GLA 2004 Housing Requirements Study satisfies most of the requirements of PPS3 at the regional level. In translating the housing market model output from that Study (34% affordable housing, split 60:40 between social and intermediate) into the London Plan policy 3A.9 targets, the "broader remit to consider sustainable communities rather than being based exclusively on affordability" was explicitly recognised (*CD7.11, paragraphs 33-37*). It would therefore be wrong to take these considerations into account again when considering provision on individual sites.
- 8.4 In contrast to the established provenance of the policy targets, there is no clear evidence as to why they should not be met on this particular site. Islington does not share the view that affordable housing provision on the Triangle Site should be viewed in the wider context of provision on the Main Site. This is particularly so now that development on the Main Site has been both permitted and commenced, since there can no longer be any suggestion that there is a need for the Triangle Site to in some way cross-subsidise housing or infrastructure provision on the Main Site. Indeed, Camden's own report, in relation to the Triangle Site alone, avers that a key policy consideration is whether the scheme would deliver 50% affordable housing (*CD4.5, paragraph 1.9.58*). In any event, taking both sites together, the baseline mix (before alternative "cascade" arrangements are triggered) would result in only 42% affordable housing, which would still fall short of the 50% target, with social rented at 64% of that and intermediate at 36%, which likewise would not meet the policy target proportions.
- 8.5 Islington acknowledges that the London Plan refers to the need to have regard to all sources of affordable housing supply (*ID8.7, paragraph 3.45*) in addition to simply applying policy 3A.9 to new development proposals. Nonetheless, the evidence shows that by far the greatest level of provision comes from planning Obligations (*ID9.3, main proof, table 2 on page 32*). While analysis of proportions of affordable housing in schemes within individual Boroughs suggests an average outturn of about 37% (*ID9.3, main proof, table 3 on page 33*), these figures are distorted by the inclusion of estate refurbishment programmes, where affordable housing delivery is significantly higher than on new development schemes. There is no convincing evidence of how the policy targets are to be met outside the normal development control process. Nor is there any evidence to support Camden's contention that provision of intermediate housing at the expense of social rented housing required by the policy targets is justified in order to create a more balanced community or to anchor existing residents in the area. The Environmental Statement (*CD1.16, page 5.88 Table 5.4.5*) under the heading "Housing: Tenure Mix", for example, identifies moderate beneficial impacts on the area if the Triangle Site and Main Site are considered together and "no significant difference" if the Triangle Site

is excluded altogether. Had there been any empirical justification for changing the social rented/intermediate mix in the King's Cross Area, Camden could have pursued the subject through its UDP when on deposit in 2004, but did not do so. The existing housing hereabouts is in any event diverse enough already with areas of new market housing, older private stock and intermediate tenures separating the appeal site from the Bemerton Estate further to the south, so there is no need to create a buffer of intermediate or market housing stock rather than fully meet the policy targets for social rented and intermediate housing.

- 8.6 The case that affordable housing targets cannot be met on this site because of adverse economics of provision is also unsubstantiated. From the outset of the applications, the Appellants have elected not to open their own financial appraisal to scrutiny (*CD4.7*) and their case to the Inquiry in this respect therefore relies only on assertion. Camden has accordingly had to rely upon independent appraisal from appointed consultants, DTZ. The details of that appraisal have not been made known to Islington, despite requests (*ID10.3, appendices volume, appendix 2*). It is apparent, however, that the DTZ appraisal available to Camden at the time the Triangle applications were under consideration focussed on the Main Site (*CD4.6 and 4.7*) and information on the Triangle was only sought by Camden in the run-in to these Appeals. No other information was, or ever has been, made available to the GLA and the DTZ appraisal, while competently produced within the limitations available, is clearly hedged about with uncertainty and assumption. In the light of all of these factors, it cannot be held that the requirements for financial appraisal in the London Plan (*ID8.7, page 77 paragraph 3.52*), related SPG (*CD3.8, paragraphs 18.11-18.14*) Camden's SPG (*CD4.3 paragraph 3.33*) or Islington's Affordable Housing Guidance Note (*CD15.12, foot of page 3*) have been satisfied. Nor can it be seen how DTZ, Camden and the GLA weighed the "other scheme benefits" in coming to the view that 44% affordable housing was the most that the Main site (and 42.8% on the combined Main and Triangle sites) could bear. This is so even if the Triangle Site is considered as a single entity with the Main Site, as GLA and Camden avers it should be (*ID10.3, appendices volume, appendix 1 and ID9.7*). While the strategic stance of the London Mayor has now been established in further correspondence between the Appellants and the GLA (*ID9.15*), the subject should be viewed in the context that GLA has never seen the DTZ appraisal in full or sought to address the assumptions and shortcomings it contains. The GLA letter has also been written at the eleventh hour specifically at the behest of the Appellants.
- 8.7 Particular importance attaches to financial appraisal in this case not only for judging scheme viability, but also for two further reasons. The first is that the land has come into the Appellant's hands as a result of the Government's rescue package for CTRL and there is a formula in place for the public purse to be reimbursed from development profits, which must therefore be maximised. Not only is it difficult to be sure that will be the case on the basis of the DTZ appraisal (as the Secretary of State is currently being asked to do), but, effectively as publicly owned land, the Government's commitment in "Homes for the Future - More affordable, more sustainable" (*CD2.8*), to use such land to provide a mix of housing with at least 50% being for affordable housing, applies.

- 8.8 The second is that the proposed affordable housing offer, as set out in the proffered planning Obligation (*ID9.17*) is clearly reliant on subsidy being made available to affordable housing providers in order to ensure that they can pay the stipulated "transfer price". There is no transparency (as required by paragraph B41 of Annex B to Circular 5/05) in the way that "transfer price" has come about from analysis of the development economics. It also cannot be right that the Appellant is effectively put in the position that subsidy is needed just to meet (or in this case, fail to meet) the 50% targets applying nationally to publicly owned land (*ID10.3, evidence volume, page 63, paragraph 3/1/37*), and in approved strategic and Borough policies.
- 8.9 There is, in any event, no guarantee that such subsidy will be forthcoming, and the Inspector's Report on the Filton case illustrates the significance of this to affordable housing delivery (*CD7.6, paragraphs 10.42-10.46*). Correspondence between Islington and the Housing Corporation indicates that such matters have not even been discussed for the Triangle Site (*ID10.3, appendices volume, appendix 1*). This is contradicted in correspondence between the Appellants and the Housing Corporation (*ID9.4, appendix 2*) so no firm conclusion can be drawn either way. However, it is clear from the Filton case that the Corporation's policy is to use its finance to improve S106 packages ("additionality"), not to subsidise the achievement of baseline offers (*CD7.9, section 3498, part 6.3 "planning subsidy" and CD7.6, paragraphs 10.42-10.46*).
- 8.10 If no subsidy is forthcoming, or less subsidy than expected is made available, the baseline mix would not be delivered and the amount of affordable housing would reduce, through the cascade process in the proffered planning Obligation. This could remove 50% of the social rented accommodation proposed.
- 8.11 In addition, it is Islington's view that not all of the baseline mix falls within the PPS3 definition of affordable housing, as refined in "Delivering Affordable Housing". This is because of the time limited provisions in the planning Obligation for the recycling of subsidy attaching to the proposed "shared equity" and "right to buy home buy" units in Part 2 of Schedule A. In effect, paragraph 30 of Annex B to PPS3 and paragraphs 38-41 of "Delivering Affordable Housing" require subsidy to be recycled to provide more affordable homes or to buy back the home if necessary, failing which provision is to be regarded as low cost market housing rather than affordable housing (*ID.10.3, evidence volume, page 66 paragraphs 3.2.2-3.2.8*). It is made clear in the "Filton" decision (*CD7.6*) that subsidy includes both public and private subsidy.
- 8.12 The importance of recycling to the definition of affordable housing is also apparent from the Government's own intermediate affordable home ownership initiatives. These, with changes announced in the 12 March 2008 Budget, include "Social Homebuy" (*ID10.5, paragraphs 1.3 – 1.5*), "New Build Homebuy" (*ID10.5, paragraphs 1.6 – 1.11*), "Open Market Homebuy" – "Ownhome" and "My Choice Homebuy" (*ID10.5, paragraphs 1.12 – 1.14*). All require investment of public subsidy, which can then be recovered by the Housing Corporation, the Disposal Proceeds Fund or the Recycled Capital Grant Fund for re-investment only in affordable housing. Importantly, this is not limited to just the first 15 years, as would be the case with the Appellants' option A. Recycling of subsidy must apply in the "long term" (paragraph 30 of "Delivering Affordable Housing"), a requirement that applies similarly to most

other forms of developer contributions for community infrastructure in the context of Circular 5/05 and is further implied in a range of development plan policies and SPG relevant to this particular case (*ID. 10.3, evidence volume, page 75, paragraphs 3.2.22-3.2.33*). In the present appeals, however paragraph 9.5 of Part A of the planning Obligation allows the developer to retain the subsidy after the expiry of 15 years on the “shared equity” units and after just 6 years on the “Right to Buy Homebuy” units. Sale of the latter would also erode, over time, the more stable elements of the local population. Neither of these two intermediate categories (24 units) should therefore be regarded as affordable housing.

- 8.13 Part B of the Planning Obligation would address the recycling problem by converting the privately subsidised “Right to Buy Homebuy” units into “Shared Equity” units controlled by an affordable housing provider. Islington regards this as an acceptable option because, unlike option A, it gives primacy to the general principle that planning is concerned with regulation of the development of land and buildings in the public interest, not with controlling the aspirations of individuals, whether housing developers or occupiers. Part B is therefore Islington’s preferred approach to these categories of intermediate housing provision.
- 8.14 Even so, Islington remains unconvinced that affordable housing would be provided in line with the baseline mix. While there are affordable housing providers that have shown interest in the Triangle Site (*ID9.4, appendices 4 and 5*), there is no guarantee that such interest will endure until development on the Triangle Site begins, which could under the proposed time limit conditions be some years hence. Nor is it certain that such interest will be maintained if subsidy is not forthcoming in the amount needed to fund the transfer prices. It is also clear from analysis of “income to housing cost” multipliers that the proposed intermediate category of housing provision would not be accessible to local people other than those whose income is at or close to the upper end of need for affordable housing (*ID10.4, paragraphs 2.1-2.8*).
- 8.15 Islington gives little weight to the Appellant’s postulation that if these appeals are dismissed, other land use options might be pursued (*ID9.9, paragraphs 5.4-5.6*). This does not represent a proper “fall back” position, not least because the Appellant would have to take account of the Secretary of State’s views on the appropriate development for this site. The alterations to the statutory time limit conditions advanced by the Appellants also confirm that there is ample time for the affordable housing offer to be renegotiated to meet the relevant development targets in full, or at the maximum reasonable level, following more detailed financial appraisal.
- 8.16 In sum, insufficient affordable housing is proposed, the mix and tenure is not acceptable, there is no evidence that relevant needs would be met and the Shared Equity and Right to Buy Homebuy units proposed in option A of the Section 106 planning Obligation do not satisfy the definition of affordable housing in PPS3. It is further submitted that given the significant strategic importance of the site to London, its status as publicly owned land and the concerns raised by the Council, the conclusions drawn by the Secretary of State in this appeal will be of paramount importance to local authorities, affordable housing providers, and developers across the nation when agreeing future affordable housing proposals.

## **9. The Case for the King's Cross Railway Lands Group and for the Cally Rail Group**

9.1 King's Cross Railway Lands Group (KXRLG) has been established "to assist the representation of the needs of residents, workers and businesses in the area around King's Cross/St Pancras stations in relation to the regeneration of the Railway Lands". Cally Rail Group (CRG) is constituted primarily "to prevent detrimental effects to the neighbourhood arising from CTRL and associated developments" (*ID12.3, main proof*). They have been closely involved with both Councils during the time the applications have been under consideration and have observed a number of omissions and delays in the passage of information between the two Councils that they consider may have had a bearing on Camden's decision not to oppose the applications (*ID12.2, main proof, paragraphs 4.2.1 – 4.2.13*). The two groups presented a joint case to the Inquiry as Rule 6 parties, KXRLG addressing affordable housing considerations and CRG addressing the subject of noise and disturbance.

### *Affordable Housing*

- 9.2 The Appellants themselves chose to submit separate applications for the Main Site and the Triangle Site rather than treating the whole of their land as a single entity. That approach has a number of consequences (*ID12.2, pages 5-9*): It precludes any prospect of transferring a proportion of the proposed housing provision from the Triangle Site to the Main Site, so that any housing not provided on the Triangle Site to meet the London Plan targets would be lost to the area altogether. Equally it is impossible for the Appellants to rely on affordable housing provision on the Main Site to justify undershooting affordable dwelling targets on the Triangle Site (*ID12.2, main proof, pages 2-11*). The figures for the combined sites show that those targets, for both quantum and mix, would be undershot in any event (*ID9.3, main proof, table 1 on page 6*). The Appellants' approach has also resulted in a convoluted mechanism for phasing, which finds expression in the proposed extended periods cited in the time limit conditions that have been suggested (*ID8.9, conditions 1 – 5 and ID12.3, consultation response*).
- 9.3 In the King's Cross Opportunity Area, the London Plan seeks 2250 dwellings of all tenures for period 2001-2006 (*ID8.7, page 301, Table 5B.1*). The EIP Panel considering the Early Alterations to the London Plan acknowledged KXRLG disappointment with this figure and recommended further work be undertaken (*ID12.2 appendix bundle, appendix ME4*). In evidence, the Appellants disclosed that this figure will only just be achieved from 1626 dwellings (net) on the Main Site and 246 on Triangle Site if one also includes the Opportunity Area's proposed student accommodation (which does not contribute to affordable provision) and the Manhattan Lofts in the refurbished St Pancras Station (which also does not contribute to affordable housing).
- 9.4 Islington is the sixth most deprived Borough in the Country and this area is one of the most deprived in that Borough. Camden also has seriously deprived wards in this part of its Borough. The Housing Needs Survey for Islington (*CD7.10*) showed over 11,000 households in housing need and 6,500 households on the waiting list for social rented accommodation. Camden's waiting list is also huge, at 10,442 households (*CD4.9*). There are serious problems of homelessness and overcrowding. In March 2007, the average house price in Islington was reported to be over £330,000 (*CD5.13, page 10*),

which is well beyond the means of many local people. Indeed, a sample survey of the King's Cross area carried out by the King's Cross Partnership in 2000 (*ID12.2, appendices bundle, appendix ME.6*), although showing a wide spread of local incomes, revealed an average of only £21,000. Of families with children, 54% had incomes below the London average, with many people employed at only minimum wage levels. An average of only 40% affordable housing has been provided in Camden and Islington (*CD3.10, tables 16 and 17*). In 2005/2006 only 19% of homes constructed were for social rent, and 12% intermediate. The rest, 69%, were market housing units. Islington has increased intermediate provision (*ID12.2, supplementary proof, paragraph 3.3*), but even this is too expensive for those in need.

- 9.5 Against that background, it is clear that affordability needs to be addressed by better than average social rented provision on the Triangle Site, not below average provision as proposed in the applications. This is the more so given the local population's acknowledged social and economic diversity (*ID9.3, main proof, paragraph 6.6 and appendices bundle, appendix ME.5*). Within the area's existing estates of flats, educated people, students, low-skilled and low-paid people from a wide range of ethnic groups may all be found living alongside each other. To some degree this mix has evolved from right-to-buy sales of former Council stock, which has now been diluted by about 30% in both Boroughs (*ID12.2, supplementary proof, paragraph 3.5*). This trend may be expected to continue, with more mobile households displacing those for whom the security of Local Authority tenure has traditionally anchored a highly settled community (*ID12.2, supplementary proof, Annexe on page 4*). Provision of large amounts of market and immediate housing will not reinforce this anchorage, as Camden and the Appellants suggest. Rather, it will reinforce the trend towards a transient community, with a steadily decreasing stock of social rented housing providing accommodation only for the poorest and most deprived in society in ever increasing concentrations, while other forms of tenure (including the potential for sub-letting in the intermediate housing categories) become increasingly exposed to the buy-to-let market and others who can afford to buy into this highly accessible part of central London, close to CTRL and in an attractive, newly regenerated environment.
- 9.6 It is for these reasons that the London Plan 70:30 social rented:intermediate split must be adhered to, if not exceeded on the Triangle Site in line with the GLA's draft housing strategy 2007 (*CD3.4, page 31*). Applying those proportions to the 84 affordable homes currently being proposed, there should be 59 social rented units rather than the 36 offered. If the affordable housing offer was the full 50% required by the London Plan, there would be 123 affordable homes provided rather than 84, and 86 would be for social rent. These figures would be magnified if the Main Site and Triangle Site had been considered on a combined basis. While that is no longer possible, they are indicative of the extent to which social rented provision is inappropriately being diminished in the Opportunity Area as well as on the Triangle Site.
- 9.7 The DTZ analysis is plainly an inadequate basis on which to argue that 44% affordable housing is the most that the combined sites can economically bear (*CD4.7*). It is based on assumptions and assertions rather than on empirical evidence (*ID12.2, main proof, paragraph 4.5.6*) and it follows that GLA support for the scheme is equally unfounded (*CD3.6*).

- 9.8 The proposed Shared Equity and Right to Buy Homebuy dwellings are not compliant with the definition of affordable housing in PPS3. "Delivering Affordable Housing" makes clear that intermediate housing should not disappear when beneficiaries staircase out of the sector. In the Appellants' proposals, the staircasing receipts simply represent a short term loan to initial occupiers which, after 15 years, is returned to the developer as a capital receipt (*ID12.2, main proof, paragraphs 5.4*) or in the case of Homebuy become part of the financing of subsidies to purchasers of other forms of intermediate housing (*ID12.2, main proof, paragraph 5.5*). Neither the judicial review of the Main Site proposals (*ID12.2, main proof, paragraph 5.6.1*) nor Counsel's advice to Islington (*CD5.18*) considered subsidy recycling, so Islington Members were left to form their own view on the subject. The two categories of intermediate housing concerned should, it is submitted, be discounted from the affordable housing offer and regarded as low cost market housing. Without them, the affordable housing offer would be reduced to just 60 units out of 246, or to just 24.4%.

#### *Noise and disturbance*

- 9.9 The King's Cross Development Brief suggests that the Triangle Site could accommodate about 200 one- and two- bedroom homes, but only if the environmental conditions will be acceptable. Evidence for this is unconvincing in the light of local knowledge of the area.
- 9.10 The Environmental Statement, as submitted, was unsatisfactory in that it did not include full analysis of noise, vibration and wind effects. Those defects have, in some measure, been addressed by the further Environmental Information requested from the Appellants by the Secretary of State. Concerns about road and railway noise (including that from railway warning bells) remain, while noise impacts from the Cemex Plant have not been accounted for at all (*ID12.3, main proof, paragraphs 5.2.2 and consultation response*). It is now accepted, however, that transformer noise (*ID12.3, main proof, 5.2.3 and 5.2.4*) would not be significant.
- 9.11 Noise policies in both Camden and Islington's Unitary Development Plan have been formulated around the advice in PPG24, which is now rather dated (*ID9.10, paragraph 14, ID12.3, consultation response*). Islington's UDP says that new residential development that will be exposed to an existing or potential noise source should demonstrate how this will be taken into account to protect potential occupiers (*CD5.1, policy Env17*). Camden's UDP is, however, more stringent. Its policy SD7 (*CD4.2, page 29*) says that the Council will not grant planning permission for development sensitive to noise/vibration in locations with noise/vibration pollution. There is no dispute by Camden or the Appellants that this site is exposed to such pollution. Moreover, aside from situations where noise attenuation is not required, the noise and vibration thresholds in Appendix 1 (*CD4.2, pages 219-220*) identify just two noise exposure categories (NECs) for sites adjoining roads and railways, rather than the three in Annex 1 to PPG24. Table A in that Appendix sets out noise thresholds beyond which permission will not be granted (with "not" emphatically underlined), and Table B deals with situations where attenuation will be required. This approach, which had changed from that in the predecessor UDP current when the applications were first submitted and considered (*CD4.5*), was not specifically drawn to Camden Members' attention when resolving that, had it not been for these appeals, permission would have

been granted. Given the narrowness of the vote on the latter occasion (*CD4.4*), the policy change may, had it been made known to Members, been sufficient in itself to have altered Camden's stance at these appeals.

- 9.12 It is clear from the terminology of Camden's UDP that the Borough Council does not want residential development to take place in locations where residents are unable to open their windows without being exposed to excessive noise. The matter was also one of concern to Islington's noise team (*ID12.3, appendices bundle, appendix DS.6*). In the appeal scheme, Block A (162 market dwellings) would stand on the edge of the new Thameslink tunnel and portal (partly closer than when the noise team commented) and Block B (84 affordable dwellings) would stand on the edge of York Way (*CD1.4, parameter plan TS006*).
- 9.13 The Further Environmental Information (*CD1.27A, Part 26, paragraph 26.1.7 and table 26.5*) states that virtually all of the western façade of block B will fall within PPG24 NEC D ("planning permission should normally be refused") and Camden's Table A ("permission will not be granted") both during day-time and night-time periods. The northern end of block B and all of the northern façade of block A will fall within NEC C ("planning permission should not normally be granted") and Camden's Table B ("attenuation measures will be required"). While it may be that air-borne road and rail noise can be attenuated by double glazing, it is unsatisfactory for households to have to live in a sealed environment. It is likely that the flats will have balconies, which will be exposed to excessive noise without any mitigation, as would users of the central area of amenity space. It is also inappropriate to rely on average noise levels for the design of adequate attenuation measures, because average levels do not take adequate account of sudden noise peaks such as when the warning bell in the ECMLR tunnel rings each time a train enters or leaves the tunnel into King's Cross, or the tipping of aggregates into the metal bins on the Cemex site. Noise deflectors installed there when permission was originally granted in 1961 serve only to direct noise away from Gifford Street and directly towards the Triangle Site (*ID12.8*) and there is no certainty that this operation will move away from its present site in the future, or that an equally noisy use would not displace it. Sudden, intermittent types of noise are more likely to be cause of disturbance especially if they occur during relatively quiet times when people are asleep, the warning bell being not dissimilar in tone to an alarm clock (*ID12.9*).
- 9.14 The Environmental Statement also bases its findings on noise on a number of estimates of future rail and road traffic conditions when the Opportunity Area is fully developed. With regard to the new Thameslink tunnel, in particular, noise predictions rely on measurements taken on the already operational part of that line to Gatwick (*CD1.27A, Part 26, paragraph 26.1.16*). Those were taken on a straight section of track, not at a tunnel portal or where the railway is (as here) on a curve and a slope, where both air and ground-borne noise is likely to be greater. The CTRL Barking portal is more representative and shows the way in which noise from ground-borne vibration increases as the tunnel becomes shallower, expands sharply at the portal itself and continues until the area is at grade (*ID12.3 consultation response and proof appendices bundle, appendix DS.1*). Ground borne vibration noise cannot be attenuated by double glazing, and requires constructional measures. The Appellants have no control over construction of the Thames Link tunnel and negotiations with

London Continental Railways (one of the current Appellants) to secure tunnel attenuation was unsuccessful on the Main Site, so is unlikely to be successful here. No constructional measures are proposed for blocks A and B themselves. Nor do the Appellants have any control over external noise. Indeed, rather than introduce attenuation measures for the latter, the only suggestion made by the Appellants is to alter the NEC by taking into account the increased separation distance provided for by the cycle lane in York Way (*ID 9.5*). The cycle lane was there when the Environmental Information was compiled, and it is not separated from the main carriageway by anything other than a now faintly painted line, eroded by vehicles crossing into it. Its late identification by the Appellants has no effect on traffic noise reduction whatsoever.

- 9.15 While estimates of noise levels at the time the proposed development is occupied are necessary, their accuracy cannot be guaranteed. If, in the event, residents find noise levels unacceptable, owner occupiers will have the option of selling up and moving elsewhere or letting their properties to private tenants. Those in social housing, however, have much more restricted options, amounting to either seeking a transfer or sub-letting to finance alternative accommodation. In either event, the effect on the social mix of the area will be detrimental – replacing permanent patterns of residency with transient ones.
- 9.16 In sum, while not wishing to stand in the way of residential development on the Triangle Site, and being supportive of its early development, it is necessary to ensure that the housing mix will benefit rather than harm the local community and, before permission is granted, to be certain that living conditions will be acceptable. The applications and supporting information do not provide that certainty at present. The Development Brief implicitly provides for development for other commercial and social uses if the Secretary of State finds a satisfactory residential environment cannot be achieved this close to railway lines (*CD6.1*). There is, however, no substance in the threat that the Appellants might pursue other forms of development if the current affordable housing offer is rejected, because compliance with the statutory development plan requires the housing targets for the Opportunity Area to be met. With the Main Site now excluded from the residual requirement, housing provision on the Triangle Site is the only way the targets can be met. Any scheme permitted should provide for at least 35% social rented accommodation and at least 50% affordable housing overall, in a good quality residential environment. Nothing but the best will do for King's Cross.

## 10. Other Representations (objecting and supporting)

*Mr Perrin, Flat 3, 4 Rufford Street, E4 (appearance)*

10.1 Mr Perrin is a close neighbour of the Triangle Site and, having lived here since 2001, affirms this to be a very noisy place in which to live. The main cause of disturbance is the Cemex Batching Plant, with 30 ton lorries queuing up in Randell's Road before reversing into the batching plant site with their beepers operating. There, they discharge their loads of gravel into large steel hoppers, which makes a tremendous din. Originally, this could start at 06:45hrs, but following protracted complaints there is now agreement that this will not start until 08:30hrs. The noise continues periodically all day, and there is constant movement of ready-mix lorries too. It is surprising that noise from this plant was not specifically mentioned in the original Environmental Statement. The hoppers are higher than the Triangle Site and the noise is deflected towards that site by barriers required to reduce the noise impact on the Rufford Street flats. There are two other sources of noise – CTRL and ECML. The ECML is now electrified but long distance trains are still diesel powered High Speed Trains, known as "howlers". These are very powerful and very noisy. CTRL trains pass through an acoustic shed on the bridge but make a low frequency hum from their electric power units. They have two of these, one at each end and there is a 30 second split between the noise of the engine at the front and that at the back. These are clearly audible inside Mr Perrin's flat, which is double glazed. York Way is noisy too. It is wrong to rely on average noise levels when considering intermittent noises of the type that prevail here. The noise from an alarm clock going off for a few seconds, for example, would be insignificant if averaged over an hour or more but it is enough to seriously disturb sleep. There are web-site links to evidence (*ID12.10*). The Cemex plant was allowed on appeal in 1961 (*ID12.9*), when steam trains were the main noise source. Their significant contribution to background noise levels ceased shortly afterwards and a building relied upon by the then Inspector as a noise barrier has since been demolished.

*Mr A Patterson, Chair of Somerstown and St Pancras Art (written representation)*

10.2 Many local people want to see development here go ahead. All the issues that have been holding development up have been dealt with over the years (*ID8.6*).

*Union Railways (North) Ltd (written representation)*

10.3 Union railways has no objection to the proposals (*ID12.13*)

*Metropolitan Police (written representation)*

10.4 The police have no objection in principle and wish to be involved in designing out crime at reserved matters stage (*ID 8.5*).

*The Islington Society (written representation)*

10.5 The Society supports Islington Council's objections to the scheme (*ID8.5*).

*Mr A Adkins (e-mail)*

10.6 Mr Adkins is supportive of the proposed development (*ID8.5*).

*Cross-London Rail Links Limited (e-mail)*

10.7 As an agent for Transport for London and the Department for Transport in safeguarding Crossrail, no objection is raised to the proposals (*ID 8.5*).

*Somerstown People's Forum (written representation)*

10.8 The forum states that housing in this part of London is at crisis point and would not benefit from further private rented accommodation, arguing that the only answer is to provide more Council housing and use the site for improve local facilities to ease pressures on existing schools and services (*ID8.5*).

*Representations received by the Councils at application stage*

10.9 Large numbers of representations (supporting and objecting) were received by both Councils as a result of publicity and consultation in connection with the processing of the respective planning applications. These are summarised in the relevant Committee Reports (*CD4.5, paragraphs 1.5.1 – 1.5.36 and CD5.15 pages 11-21*), which display a large measure of commonality in format and content. Both note that 30,000 notifications were sent to adjoining occupiers, resulting in 69 representations with regard to the original proposals and 2 to the revised proposals (*paragraph 1.2 above refers*).

10.10 Among the representations received, Network Rail and CAGE support the proposals (*CD4.5, paragraphs 1.5.8 and 1.5.9*). King's Cross Development Forum considers the site suitable for 1 and 2 bed units but not family housing and considers there should be less car parking provision (*CD1.5.11 and 1.5.12, 1.5.29 and 1.5.30*). The London and Middlesex Archaeological Society raise no objections on archaeological grounds (*CD4.5, paragraph 1.5.15*) and the Camden Square Conservation Area Conservation Advisory Committee consider that anything more than retail provision for the occupiers of the Triangle Site would be unjustified (*CD4.5, paragraph 1.5.19*). A range of Local Groups raise concern about townscape issues, parking and the attractiveness of the proposed amenity space and the suitability of the site for housing (*CD4.5, paragraphs 1.5.21 – 1.5.26 and 1.5.33*). There are also concerns about the adequacy of infrastructure investment including access to primary health care provision (*CD4.5, paragraph 1.5.27*), although Camden NHS Primary Care Trust acknowledges that the Triangle Site is not a suitable location for new health care facilities (*CD4.5, paragraph 1.5.13*). Similar points are raised by adjoining occupiers, who among other things are supportive of proposals for integrating the development with the surrounding existing neighbourhoods and for minimisation of car usage, but want to ensure suitable affordable housing provision, and better open space (*CD4.5, paragraphs 1.5.34 - 1.5.36*).

## **11. Planning Conditions**

11.1 A list of conditions, using similar phraseology to those imposed in the Main Site permission, is included in the Statement of Common Ground (*ID8.3, appendix D*). These were jointly promoted by the Appellants, Camden and Islington, but it should be noted that the list includes alternatives to conditions 39 – 43, which relate to noise and vibration, advanced by Islington. The Amenity Groups also separately suggested an amendment to condition 39 and an additional condition referring to wheelchair accessible housing (*ID12.11*). During the adjournment, I questioned the reasons for requesting variation of the statutory time limit conditions (*ID8.8 and ID12.3, consultation response*,

*paragraphs 7.3-7.5) and produced some specific comments on others (ID8.9) which in turn prompted a response from the Appellants (ID9.9, sections 4 and 6) and a revised list of conditions agreed by the Appellants, Camden, Islington and the Amenity Groups (ID8.11). This includes a condition formulated to enable either of options A or B in the Affordable Housing Agreement to be triggered (see paragraph 5.5 above and ID8.11, appendix E).*

## **12. Inspector's Conclusions**

- 12.1 From the cases reported above, I draw the following conclusions. The numbers in brackets [ ] within the text identify individual paragraph references supporting particular findings.
- 12.2 I begin my conclusions by dealing with matters arising from the form and content of the applications. I then deal with the main planning considerations raised by the proposals and other matters raised in the representations. Following that, I briefly consider planning conditions and Obligations, set out my overall conclusions and, finally, make my recommendations.

### ***Form and content of the applications***

- 12.3 In outline planning applications, "reserved matters" relate to buildings, not uses, so it is important when considering applications involving both forms of development to ensure that proposals are described in a way that avoids confusion over which details, other than the statutory reserved matters, are intended to be reserved for future consideration. I expressed concern at the Inquiry that the description in the application form, by including a general reference to the Revised Development Specification document, did not provide the requisite degree of clarity. It was accordingly agreed that the description should be amended to exclude specific reference to that document [1.4, 1.5].
- 12.4 At the time when these outline applications were submitted the reserved matters were those defined in Article 1 of the Town and Country Planning (General Development Procedure) Order 1995, rather than the reserved matters now defined in the Planning (Applications for Planning Permission, Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2006, which have come into force since. This bears particularly on the interpretation of "siting" and "means of access" [1.3] and the interpretation of the "parameter plans" in the Revised Development Specification [1.4]. Having raised the point with the parties, a legal submission was made to the Inquiry in the light of which the parties expressed broad contentment that the "new" (2006) reserved matters should take the place of the "old" (1995) [1.3]. My consideration of the outline proposals has therefore been undertaken on this basis.
- 12.5 The Triangle Site represents only a relatively small part of the Appellants' wider land holding in the area [2.1], and itself forms only part of the wider King's Cross Opportunity Area established in the London Plan [3.14]. To distinguish them, I have referred to the appellant's land holding in addition to the Triangle Site as the "Main Site" and the Triangle Site together with the Main Site as the "Combined Sites".
- 12.6 The King's Cross Railway Lands Group and Cally Rail Group (henceforth "the Amenity Groups") advanced the view that separation of the Triangle Site application from the Main Site application [1.2, 2.1] has had detrimental consequences for the consideration of the current appeals applications [9.1, 9.2]. The submission of an application to each Council was, however, an administrative necessity [1.1] and it would not in my view have been appropriate to submit these in the form of applications for the Combined Sites, since Islington would then have been faced with the burden of considering the whole before separating out the matters pertinent to its own determination, for

the understanding of those involved at consultation, publicity, member report and decision stages. While there are powers under Section 29 of the Planning and Compulsory Purchase Act for constituting joint committees on large, cross-boundary sites for the purposes of LDF policy formulation, there is no similar power for development control decision making. The Councils have worked together on the former [3.3, 3.8, 6.5] and it falls to the Secretary of State to intervene if considered expedient to do so, when there are differences between them on the latter [4.1, 4.2]. The Main Site application has been permitted without such intervention [6.44]. Nonetheless, there are important inter-relationships between the Main and Triangle sites, for example in the form of joint infrastructure investment [6.14, 7.2], which ought not be ignored. I identify these and comment upon them in the relevant following sections of this Report.

### ***Main Considerations***

- 12.7 In the light of the foregoing, the evidence at the Inquiry, the written submissions, and my inspection of the site and its surroundings, I am led to the view that there are two main considerations in these appeals, as follows:
1. The suitability of the affordable housing offer in terms of number, mix, tenure, price/affordability and arrangements for recycling of subsidy.
  2. The suitability of the site for residential development in the context of the existing and future noise (air- and ground-borne) environment.
- 12.8 I structure my reasoning on the first of these considerations around the nature of the matters raised by all parties to the Inquiry, rather than Islington's reason for refusal alone [6.3]. In particular, while I have relied upon the PPS3 Annex B definition in its formulation and thus use the word "subsidy", affordable housing is dependent upon the availability of funding in various forms which might include elements of both (capital) grant or (revenue) subsidy. I have taken the PPS3 definition as intending to cover both.

### ***Consideration 1: Suitability of the affordable housing offer***

#### *Number: Quantum of housing*

- 12.9 Policy KC4 of the adopted Camden UDP seeks provision of at least 1000 dwellings (1074 gross) across the whole of the King's Cross Opportunity Area [3.6]. This is a figure that may be taken to be extended to embrace Islington's part of the Opportunity Area by reason of paragraph 2.9.4 of the jointly adopted development brief [7.11]. It is not a maximum figure and the Brief indicates that some 1800 dwellings could be accommodated on the entirety among which, subject to satisfactory designs and residential amenity being achieved this close to the railway lines, the Triangle Site could itself accommodate about 200 one- and two-bed homes in contributing towards the overall housing provision in the Area [3.14].
- 12.10 There is good reason to promote housing provision on the Triangle Site to the maximum extent that environmental conditions allow. This is because Planning Policy Statement 3 "*Housing*" (PPS3) and its accompanying "*Delivering Affordable Housing*" document, urge that overall housing provision should be set at levels based on evidence of current and future need and demand, thereby avoiding adding to upward pressures on price (and thus

affordability) in both market and affordable sectors while also establishing a suitable balance between the two. This is with the aims of creating sustainable, inclusive, mixed communities and ensuring that everyone has the opportunity of living in a decent home, which they can afford, in a community where they want to live.

- 12.11 On the Main Site, 1700 dwellings have been permitted and, with 246 proposed for the Triangle Site, total housing numbers would be 1946 (gross) [6.10]. This is below the 2,250 figure now anticipated in the London Plan, but which applies to Opportunity Area as a whole for the period 2001-2026 [3.3, 9.3, 6.12]. Both independently and in combination, the Main and Triangle Site proposals exceed the Brief requirements [6.10] and, to that extent, represent a welcome potential addition to London's housing stock. Given that this may be found to result in a commensurate increase in affordable housing provision, such an outcome would be doubly beneficial.

*Number: Quantum of affordable housing*

- 12.12 Affordable housing policies to date have been predicated almost entirely on the outcome of Housing Needs Surveys. As PPS3 advises, it is intended that the appropriate proportions of market and social housing are in future to be determined on a broader basis following the process of identification of relevant Housing Market Areas (HMAs) and the carrying out of Strategic Housing Market Assessments (SHMAs). However, HMAs have not yet been identified in London and SHMAs have not yet been carried out. In the interim, Government Office for London and the GLA have agreed that the 2004 Housing Requirements Study satisfies most of the requirements of PPS3 at the regional level [8.3]. It is primarily from this Study that current London-wide targets for affordable housing derive.
- 12.13 These targets inform the formulation of London Plan policies 3A.9 and 3A.10. The first of these policies bears primarily on the preparation of Development Plan Documents at Borough level, while the purpose of the second is essentially to enable strategic intervention in the handling by the Boroughs of individual planning applications [7.1]. While it is open to Boroughs to call upon the latter policy in support of their own development control decisions, it is at least expedient to do so only when there is some indication of objection from the strategic planning authority. In this case, correspondence between the Boroughs and the GLA Head of Decisions makes clear that he is content and does not propose to recommend the London Mayor to issue a Direction to refuse permission on the basis of the inadequacy of affordable housing provision or, indeed, for any other reason) [6.3].
- 12.14 Policy 3A.10 does not, in any event, stipulate that 50% affordable housing must be provided in all cases [6.8]. Rather, it seeks the "maximum reasonable amount" having regard to a range of factors [6.9]. Explanatory text says that this includes taking account of economic viability and the most effective use of private and public investment in the assessment of schemes. It does not, however, state that the GLA will, or is obliged to, undertake viability assessment itself. Rather, both policy and text imply that the GLA relies primarily on the Boroughs to undertake or provide such assessment to the extent necessary in any particular case [3.4]. The proposal for 34% affordable housing on the Triangle Site (43% on the combined sites) [5.5] falls below the 50% target in London Plan policy 3A.7 but, given the clearly stated

position of GLA, I thus find no reason to doubt that the proposed proportion of affordable housing would satisfy strategic development control policy 3A.10 requirements.

- 12.15 In Camden, UDP policies H2 (for affordable housing in general) and KC4(b) (for the tranche of housing above the first 1,000 units on King's Cross Opportunity area in particular) both adopt the same 50% target for affordable housing. This is expressed in the policies as a negotiable local development control policy target having regard, among other things, to the "economics of provision" or "economic circumstances" respectively [3.6]. Neither, however, require the developers to provide the Council with economic analyses of their schemes [8.6, 8.7, 8.8], the only passing reference that may be taken to authoritatively suggest otherwise being in the penultimate sentence of paragraph 18.14 of the GLA's Housing SPG [8.6].
- 12.16 In the event, the Council employed its own consultants (DTZ) to undertake independent analysis of the viability of the Main Site and only sought additional information relating to the Triangle Site from those consultants in the run-up to these appeals [6.13-6.15 and 7.5]. The original economic appraisal of the Main Site nonetheless found that the affordable element of proposed housing provision on that site at 44.1% was at, or close to, the maximum that the development could bear [6.14]. The up-date note deals with the Triangle Site as an integral component of the Main Site rather than separately and concludes that the Triangle Site proposals (which would reduce affordable provision to 42.8% on the Combined Sites) do not significantly affect this finding [6.14]. That is unsurprising given the relative sizes of the two sites.
- 12.17 Nonetheless, I do not regard Camden's approach to the appraisal of the economics of provision in this particular case to be anything other than appropriate in the light of the inherent economic linkages between the Main and Triangle Sites, including the substantial amount of common infrastructure investment involved and its requisite phasing. I was informed that a financial appraisal using the Three Dragons toolkit or similar could be undertaken expeditiously [3.4]. However, it seems to me that such analysis is not best suited to deal with developments where costs and benefits are spread across more than one site and where development (as here) is likely to take place some years hence. The DTZ appraisal has been carried out by a firm well acquainted with the financial aspects of large developments in major cities, and includes separately sourced valuation advice on infrastructure costs. Valuation is not a precise science and it is inevitable that all such exercises will be hedged about with caveats and provisos. I doubt, in this particular case, that any more verifiable economic assessment could be achieved for a development of the scale and complexity involved without compromising either commercial sensitivity or the independence of the analysis. The appraisal was, I judge, sufficient to guide the Council's negotiations when considering the proposals for the Main Site, and to provide reassurance on its approach to the Triangle Site. The economics of development are not, by themselves, determinative under policies H2 and KC4(b) in any event [7.4, 7.5]. Whether the Triangle Site is considered separately or together with the Main Site, the requirements of those policies to "have regard" have been satisfied to the extent that their formulation requires and I see no reason to delve further into the economics of provision on the Triangle Site alone in order to further satisfy them.

- 12.18 Turning to Islington, none of the Main Site lies within its administrative boundary, and the boundary divides the Triangle Site in such a way that the Borough would have none of the Block B affordable housing and only a small amount of the Block A market housing within its area [1.1, 1.2]. In its UDP, policy Imp18 deals specifically with the King's Cross "regeneration area" but contains only a brief reference to affordable homes in the wider context of securing appropriate community benefits [3.8]. Several of its other "saved" policies are concerned with affordable housing provision in the Borough as a whole, but none include a specific numerical or proportional requirement for market/affordable mix [3.8, 1.6, 6.3, 6.11]. Its 2003 Supplementary Planning Guidance establishes an "interim" affordable housing target of 35%, a figure that the appeal scheme does not fall significantly short of [3.13, 6.11]. I attach little significance to the Council's 2006 Guidance Note on affordable housing as this has no formal status in the context of PPG12 or PPS12 advice [6.11], but note that it adopts the same 50% figure as the London Plan (and Camden's UDP) and observe only that it says independent financial assessment will be undertaken where a developer does not consider it possible to meet requirements. As in Camden, that does not require the developer to provide such an assessment and the Council accepted that, notwithstanding policy Imp18, its own interpretation of London Plan and Joint Development Brief policies, it had never invited the Appellant to supply one, or considered commissioning one itself, whether before or after determining the application [8.6, 8.7, 6.15].
- 12.19 The Amenity Groups' main concern on quantitative matters is simply to maximise affordable housing provision across the combined sites, arguing that housing need in the King's Cross area is especially high [9.2-9.4] and suggesting that above average provision should therefore be made here rather than the below average provision proposed [9.5]. Various interpretations have been placed on what may be regarded as "average" provision [6.12, 8.5]. Whatever the case may be in that particular respect, the London Plan makes clear that the 50% strategic target includes affordable housing from all sources and not just that secured through planning Obligations [6.8]. It is not therefore sufficient to say that, simply because a particular scheme fails to provide 50% affordable housing, it is unacceptable – some schemes may significantly exceed, or fall below, this strategic target figure. Nor is it accurate to claim that this figure can only be undershot if justified by rigorous financial appraisal. That is not what the policies require.
- 12.20 I see no reason for any different approach in this case simply because the Government has some pecuniary interest in the land [8.8]. To the extent that there is any 50% target applying to public land, it might reasonably be applied to land being developed by public bodies in the future but not, in my view, to development being initiated by others and which has already been in the planning pipeline for some years [8.7].
- 12.21 In the light of all of these findings, I regard even the 34% of affordable housing in the appeal schemes for the Triangle Site alone to be compliant with the statutory development plan for this part of London, and am content that, in the context of those policies, it represents the maximum reasonable level of provision in all the circumstances. This is the more so if the Main Site and the Triangle Site are treated as a single entity, but this conclusion stands in either case.

*Tenure: Proportions of social rented and intermediate housing*

- 12.22 The parties advance different ways in which the mix of affordable housing in the scheme proposals might be calculated [6.24, 7.3, 7.7, 9.6]. All, however, agreed that in their own assessments they had relied upon calculation by units rather than floorspace or habitable rooms, so I adopt the same approach. It further seems to me that calculations for the Triangle Site and for the Combined Sites both have some relevance. On that basis, the scheme proposals are for a 43:57 mix on the Triangle Site alone and 64:36 mix on the Combined Sites.
- 12.23 Neither accord with the 70:30 target mix<sup>1</sup> in London Plan policy 3A.9 or Camden UDP policies H2 and KC4 [3.4,3.6]. As with the overall quantum of affordable housing, however, strategic policy takes the form of guidance for LDF formulation (there being no target mix in London Plan policy 3A.10) and all require a range of factors to be taken into account.
- 12.24 The Joint Brief identifies differences between Camden's and Islington's UDP policy approach [3.11], but this is largely because the latter pre-dated the ascendancy of intermediate forms of affordable housing tenure. Islington has drawn attention to the provenance of the 70:30 target mix in the Greater London Housing Requirements Study 2004 [8.3]. Solely on the basis of house prices and incomes (affordability), this indicated that an 89:11<sup>2</sup> mix should be required, before concluding that in the light of the broader remit to consider sustainable communities, a 70:30 mix remained the GLA's overall target. The Amenity Groups also consider that precedence should be given to social rented provision, because their own data indicates that intermediate housing is unaffordable to local people in need [9.4]. Nonetheless, while table 9.4 in Camden's Housing Needs Survey is broadly supportive of a 70:30 target at Borough level [3.12], table 11.5 in Islington's Housing Needs Survey suggests that a 45:54 mix would be appropriate [3.12]. Part of the reason for Islington's insistence now on a 70:30 mix may be found in criticisms of its Draft Core Strategy, which was withdrawn following an exploratory meeting with the Inspector undertaking its Examination, and later press commentary voiced by the then London Mayor [8.2]. In the absence of detailed analysis in the form of Strategic Housing Market Assessment of an agreed Housing Market Area, I do not consider the science sufficiently well developed to inform a judgement on suitable proportions of social rented and intermediate housing with any great degree of precision. The tenor of the correspondence from the GLA Head of Decisions makes clear, however, that Islington would not be exposed to further criticism for failing to apply the strategic 70:30 policy mix in this case [7.3].
- 12.25 Despite the differences over proportions, there is some congruity in approach between the Amenity Groups and the Appellants inasmuch as both focus on needs among the established King's Cross Community rather than the Boroughs' respective administrative areas. This, it seems to me, is a more suitably pragmatic approach to ensuring that local needs are met than reliance

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<sup>1</sup> This equates to 35:15 in terms of overall housing provision given the 50% affordable housing target, and is expressed as such in some, but not all, of the documents, policies and submissions. For clarity, however, I use 70:30 (and its equivalents in terms of the "offer") throughout.

<sup>2</sup> Translated from 59:7:34 in paragraph 33 of CD7.11

on numerical proportions alone. The Amenity Groups and the Appellants both acknowledge that the Triangle Site is embedded in a part of Camden/Islington where there is already a high proportion of social rented accommodation. By enabling some tenants to staircase out of this social rented housing, an option that is not readily available in the area other than through “right to buy” (and consequent loss) of existing social housing, the Appellants contend that the higher than policy target provision of intermediate housing proposed would contribute to the Government’s aim of establishing sustainable mixed communities [6.19-6.25].

- 12.26 To counter this point, the Amenity Groups point out that the existing stock of social rented accommodation in the area is occupied by a stable range people from a diverse range of backgrounds, while intermediate housing would be more likely to be occupied by transient sectors of the population as well as being more likely to be attractive to the most upwardly-mobile among the existing tenants. The result of intermediate housing provision would thus be the replacement of a stable community by a less stable one, with the existing social rented accommodation in the area increasingly becoming characterised as “sink estates”. Further transience may be lent by the inherent attractiveness of the location for buy-to-let rather than owner-occupation, or sub-letting rather than occupation by the primary tenant [9.4, 9.5].
- 12.27 The arguments are, I consider, finely balanced. However, while I acknowledge that the King’s Cross Opportunity area is sufficiently large, as a whole, to establish its own social rented/intermediate mix in accordance with policy targets, irrespective of the characteristics of the surrounding area, the Amenity Groups’ concerns overlook the purposes of regeneration and its intended “ripple-out” effects to the wider area. If the scheme is to stimulate wider regeneration of this part of London, it will be important to ensure integration of existing and new populations and ensure that the area is made more attractive to all as a place in which to remain resident, by preference rather than because of the absence of alternatives. This objective would, in my judgment, be better served through provision of a range of housing choices on the Triangle Site than by further consolidating the area’s already sizeable concentration of social rented housing, as the Environmental Statement avers [6.21]. Environmental conditions also weigh in favour of a higher proportion of intermediate housing than the norm [7.7], while the achievement of a suitable mix of housing across the combined sites is a further positive feature of the proposals [6.17]. These factors, to my mind, justify a departure from the target mix in Camden UDP policies H2 and KC4(b) even if a higher proportion of social rented accommodation was to be held to be more likely to meet the needs of the present local population.
- 12.28 Moreover, PPS3 promotes an approach to affordable housing that takes a wider view of the housing market than the findings of housing needs surveys alone [8.3, 9.4] and encourages the intermediate sector in particular. The provision of intermediate housing has a particular focus on key-workers (not all of whom either need or want social rented accommodation) and there is a strategic need in London for this type of accommodation which this site, because of its ease of access to a wide range of the City’s public services and amenities that depend on key-worker employment, is well placed to meet. Provided the house types and tenure arrangements satisfactorily target the

relevant groups, the mix in favour of intermediate rather than social rented accommodation can, I consider, be seen as being entirely appropriate here.

### *Price/affordability*

- 12.29 I deal with two distinct matters under this consideration, the first being the “transfer prices” of the affordable housing to Registered Social Landlords [5.5] and the second being the affordability (and, more widely, suitability and accessibility) of the proposed housing to those in need.
- 12.30 Although Islington criticises the proposed transfer prices for the lack of transparency in their formulation [8.8], they are inevitably dependent upon a number of variables. These include estimates of build costs at the time of construction, levels of subsidy available at the time of transfer and the ratios between house prices/rents and incomes at the time of occupation. They do not include the provision of “white goods”, changes to 2007 build quality standards or additional costs associated with their provision as wheelchair accessible homes. Among the uncertainties, availability of grant funding from the Housing Corporation (or potentially, in London, from the GLA) will be a key determinant of the affordability of the transfer prices to the RSLs.
- 12.31 Evidence of the Housing Corporation’s involvement in discussions concerning funding is ambiguous [6.33, 8.9], with preliminary discussions seeming to have focussed on the Main Site rather than the Triangle Site, which it may reasonably have regarded simply as a later phase. However, while involvement in planning discussions and sight of wider economic analysis (such as the DTZ appraisal) may assist the Housing Corporation and other bodies in anticipating the potential amount and timing of calls for funding, this does not take the place of later audit of schemes by the funding bodies themselves at the time when finance for procurement of the affordable housing is sought by the RSLs involved. There is some iteration between the two processes but it would in my judgement and experience be unusual for the Housing Corporation to make a firm commitment to a set level of funding at outline planning application stage and particularly for a scheme having the scale and complexity of the Combined Sites or, in the case of the Triangle Site alone, having a likely procurement date long after the outline permission date (potentially 15 years or more). This is not least because resources, processes and priorities may fluctuate in the interim. In the context of this particular scheme, it would therefore clearly be premature to seek to resolve now, at outline planning stage, detailed questions over “additionality” [8.8, 8.9] and the extent to which the transfer price (and thus the amount of subsidy required to facilitate procurement) may vary in consequence of potential additional costs (such as noise insulation). Notably in this respect, given that “Shared Equity” and “Right to Buy Homebuy” units would be entirely developer funded [6.29, 6.30], Islington’s preference for affordable housing offer (B) [5.5, 8.13] would involve more public subsidy than the Appellants’ and Camden’s preferred offer (A) [5.5, 7.9], and thus greater uncertainty.
- 12.32 There can, however, be no doubt that both the Housing Corporation and the GLA are, at the very least, aware of Plan-led proposals to provide affordable housing on the Triangle Site [8.9, 6.12, 6.33]. The proposed cascade mechanism in the planning Obligation [5.5] is a customary and necessary approach to the management of uncertainty over future funding levels. It would be disappointing if the optimum range of tenures did not, in the event,

result but the proposed cascade arrangements work sequentially through a series of alternatives to secure the most beneficial level of provision relative to subsidy available at the time development takes place. If no subsidy is made available, I acknowledge that this could lead, in effect, to a significant diminution of the “baseline mix” affordable housing offer [5.5, 8.10]. Nonetheless, to my mind the cascade represents a realistic and sensible approach, given the uncertainties inherently involved at planning stage. Camden, for its own part, is willing to accept the risk in order to ensure achievement of other planning priorities [7.6]. Unlike the Filton Airfield case, the initial affordable housing offer also establishes a suitably demanding point from which any departure would need to be justified. Moreover, none of the RSLs involved in procurement of affordable housing on the Main Site have found the transfer prices unaffordable and there is no contrary evidence to suggest that circumstances would be different on the Triangle Site [6.33, 8.14].

- 12.33 Turning then to affordability (and suitability and accessibility) for those in housing need, it is intended that the local lettings plan will cover the social rented and shared ownership units and give priority to those who currently live in the “Central Impact Zone” (CIZ) and then to those in the “Wider Impact Zone” (WIZ) [5.5, 6.19, 6.23]. Thus, although Block B (the affordable housing block) would lie wholly within Camden, there is no question that Islington residents would qualify on equal terms with Camden residents for access to the proposed affordable housing [6.1]. The mix of unit sizes has also been designed having regard to local needs, the environmental qualities of the site and to complement the range of provision on the Main Site. This accords with the Development Brief, and is undisputed [6.17, 6.21].
- 12.34 In addition to social rented units, four different types of intermediate housing “product” are proposed [6.23-6.30]. Provision of social rented housing enjoys the support of all principal parties to the Inquiry. Some priority also attaches to the need to provide housing for key workers [3.12, 6.27] and I note that Camden’s Housing Needs Survey, despite identifying greatest need for social rented housing, says that intermediate tenures are most likely to be appropriate in meeting the needs of such workers [8.3]. The 12 sub-market rented units proposed in this category would go some way to meeting that need locally, to the benefit of London as a whole. It also seems to me that the Housing Market Area for this type of provision might therefore be drawn rather more widely than just King’s Cross and, in consequence, embrace a wider range of income levels [8.14]. Whatever the case may be in that particular respect, I consider that such provision should be supported here to meet key worker needs, irrespective of any implications there might be for increased transience in the local population [9.5].
- 12.35 The remaining three categories (“Shared Ownership”, “Shared Equity” and “Right to Buy Homebuy”) all carry the risk of increased transience [9.5], but equally provide wider housing opportunities than currently exist to “anchor” residents who might otherwise have no opportunity to satisfy changing housing needs other than by moving away [6.22, 6.25]. The “Shared Ownership” product involves the payment of both mortgage and rent, but on a discounted purchase price [6.28], so will offer a route into home ownership for some, particularly young people who can qualify for the full term of a mortgage but have less by way of deposit and who might be first-time

purchasers. The “shared equity” product offers a similar opportunity [6.29] and while private subsidy for this may be open to criticism for amounting to little more than an opportunity for the developer to share in any future increase in house values, this is subject to the usual caveat that the value of investments can go down as well as up. The “Right to Buy Homebuy” product is targeted particularly at existing local residents who wish to stay in the area (but not necessarily in their existing home) and would enable them to do so without public subsidy or loss of social rented accommodation [6.30]. All, to my mind, have a role to play in delivering a sustainable mixed community in King’s Cross, and are more likely to add to the diversity of the area than detract from it [9.5].

- 12.36 The Appellants do not deny that the intermediate products would be most likely to be affordable only by those in the upper half of the London average income range [3.11, 6.32, 6.33]. There can also be little doubt that the incomes of those in the wards nearest the Triangle Site who are in housing need are likely to be low [6.19, 9.14]. That is not to say, however, that the intermediate products would not be both affordable and accessible to some local residents whose needs are not met by market housing or by the social rented sector. For those eligible households, the products would, in varying measure, be available at a cost low enough for them to afford, determined with regard to local incomes and local house prices [6.33].

#### *Arrangements for re-cycling*

- 12.37 The point raised under this heading is a very specific one, concerning the period over which grant or subsidy should be expected to be re-invested, and how. This in turn bears on whether certain of the intermediate housing products proposed actually fall within the definition of Affordable Housing [8.11, 8.12, 9.8]. Such concern would be met to Islington’s satisfaction in the Affordable Housing Agreement Schedule B baseline mix [5.5] simply by converting the developer funded “Shared Equity” and “Right to Buy Homebuy” units into RSL-provided “Shared Ownership” units [8.13, 6.34]. However, neither the Appellants nor Camden support that option and wish to adhere to Schedule A [6.35 -6.38 and 7.8 - 7.9]. Nonetheless, with Schedule B tabled, the re-cycling point no longer represents a potential reason for dismissing these appeals and bears only upon the form in which the proposals might be permitted.
- 12.38 The subject of recycling is expanded upon in the PPS3 daughter document “Delivering Affordable Housing” at paragraph 40. The advice there is that “the purchaser may staircase out, but there should be secure arrangements for subsidy to be recycled to provide more affordable homes or buy back the home if needed”. This, however, is expressed in elaboration of an example rather than as a specific requirement. Indeed, the evidence suggests that RSLs do not always recycle staircasing receipts to provide more homes [6.36], and I am not aware of any provision that requires Councils to include “buy back” clauses in sales under current “right to buy” entitlements within the existing and extensive Council-controlled local housing stock [7.8]. Once purchased, the units themselves and any public subsidy involved in their construction are lost to the social rented sector in perpetuity. This contrasts starkly with the proposed “Right to Buy Homebuy” units that the Appellants propose. These would both save public subsidy in their provision and ensure the return to the social sector of the social rented unit being vacated [6.30].

As the Appellants point out, under option A, recycling would include not just the original subsidy but also rent income and the whole amount of staircasing receipts, including those from any uplift in property value, over a 15 year period [6.38]. I therefore find the advantages of option A convincing and consider that option B should not be triggered [11.1].

12.39 Even if not regarded as Affordable Housing, paragraph 41 of “Delivering Affordable Housing” urges Local Planning Authorities to consider the potential to provide low cost market housing as part of their approach to achieving a mix of housing. Given that concern focuses on only 24 of intermediate units, and just 12 if the “Right to Buy Homebuy” units are excluded, it seems to me that the potential for their loss to the intermediate sector would be off-set in some measure by their potential gain to the low cost market sector. This would be without compromising their siting, form and layout [6.18]. In an urban regeneration project of the size of that on the Combined Sites there is potential for housing in many forms at the margins of affordability to fulfil the needs or aspirations of future households and these units would, at least, make some contribution to doing so.

### **Consideration 2: Noise Environment**

12.40 It is unusual to consider the suitability of a site for housing development only after having considered the affordable housing aspects, but this reflects the fact that neither Council objects to the proposals on environmental grounds, the concern having been raised at the Inquiry primarily by the Amenity Groups. This does not diminish the importance attaching to the subject, as the treatment of it in Volumes 1, 4, 5 and 6 of the Environmental Statement, and in evidence, confirm [1.2, 6.38-6.43, 7.10, 9.9-9.16 and 10.1].

12.41 National guidance on planning and noise in PPG24 states that the planning system has the task of guiding development to the most appropriate locations, and acknowledges that some land uses, such as housing, may be hard to reconcile with other activities that generate high levels of noise, such as road, rail and certain types of industrial development. The advice is promulgated on the basis that, wherever practicable, noise sensitive developments should be separated from major sources of noise, and Development Plans are expected to establish a policy framework for ensuring this is so. However, where it is not possible to achieve separation of land uses, Local Planning Authorities are urged to consider whether it is practicable to control or reduce noise levels, or to mitigate the impact of noise, through the use of conditions or planning Obligations.

12.42 A number of noise sources currently exist around the site. These include the existing ECML and CTRL routes, traffic on York Way and the nearby Cemex concrete batching plant [6.40, 6.42, 6.43, 9.13, 10.1]. Noise surveys and estimates carried out on behalf of the Appellants indicate that, for new dwellings, parts of the site will variously fall within PPG24 Noise Exposure Category C (permission should not normally be granted) and D (permission should normally be refused) [6.41]. Camden UDP policy SD7 and Appendix 1 tables A, B and C reconfigure these categories and indicate that they will be applied with rigour [9.11-9.13]. While noting the advice in Annex 2 to PPG24, I attach little significance to Appellant’s argument that the noisiest parts of the site fall only just within NEC D [6.41]. The human ear may well be unable to distinguish the difference of only 0.7dB, but that applies both ways. At the

margins, residents might just as easily perceive themselves to be exposed to noise levels above NEC C as below NEC D. Noise sources in the vicinity are also likely to increase rather than decrease. This will be in consequence of trains using the new Thameslink tunnel when it becomes operational, as well as construction activity on the Main Site and, in the longer term, increased traffic on York Way arising from that development. The Environmental Statement assesses the increased noise from these sources not to be material [1,2, 6.39, 9.14]. Even so, there can be little doubt that the site is, and is likely to continue to be, exposed to major sources of noise that, under current policies, militate against residential development.

- 12.43 In the highest noise exposure category, however, neither PPG24 nor Camden's UDP preclude residential development altogether. As Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires, other material considerations must always be weighed in the balance. These include the need for, or the desirability of, noise sensitive development going ahead, and the extent to which mitigation can produce a satisfactory environment. The desirability of providing housing, including affordable housing, on the Triangle Site is most briefly encapsulated in Camden's submissions [7.10]. The noise limits proposed in the conditions agreed by the parties are also indicative of the mitigation required to reconcile the *exposure of the site* to noise with the creation of a satisfactory noise environment *within the proposed dwellings* [11.1]. With advances in acoustic technology since PPG24 was published, I have no doubt that this level of mitigation is achievable [6.41, 6.42].
- 12.44 This does not mean that living conditions would be perfect. Occupiers would be reliant upon closed windows and an operational ventilation system to ensure the required degree of quietude in their homes. There would remain the risk of exposure to periodic loud noise events, such as passing vehicles with faulty silencers or high-powered music systems. Beyond any screening effect deriving from the proposed placement of buildings on the site, the open amenity areas would also remain fully exposed to the prevailing noise environment [9.14].
- 12.45 Nonetheless, modern air-conditioned buildings customarily rely upon ducted ventilation rather than opening windows. The former might be held to create a more comfortable environment in warm conditions than the latter, and paragraph 42 of the Climate Change Supplement to PPS1 indicates how, at reserved matters stage, passive climate control measures can be integrated into building design. Sudden noise from the Cemex plant is now confined to normal waking hours [10.1] and the long term future of the plant in this location is, perhaps, also open to question [6.43]. I further observed during my site inspection that ECML and CTRL trains move relatively slowly here as they manoeuvre through curves and across points on departing from or arriving at the respective London termini. While this, together with the powering up and down of the engines, does result in some tonal and other noise effects at and beyond the tunnel portals, it is very different from the sudden bursts of noise associated with trains periodically hurtling past at full speed, as may be the case in the much broader and straighter sections of permanent way approaching Paddington or Waterloo through London's more suburban parts, for example. I would expect Thameslink trains to follow a similarly reduced speed of movement through the new tunnel, and thus perhaps have less ground- and air-borne noise impact when compared with

trains near Gatwick or passing through the Barking Portal [9.14]. The railway alarm bell just inside the existing ECML tunnel was audible at the ground level of the site during my site inspection, but not excessively so, and was quickly drowned out by the passage of the trains that triggered it [9.13, 6.43]. Road noise, albeit during a relatively quiet period of the day, was less than I have experienced on other housing sites being developed alongside main radial routes into London. Indeed, while having been prepared to be dismayed by the local noise environment when I arrived on the site, my overall impression once there was to be surprised that it was not much different from what might be regarded, in Central London at least, as fairly commonplace. With mitigation against internal noise to the level required by the suggested planning conditions and with easy access to quieter open spaces such as the Camley Street park reasonably close to hand, I (like the Councils) have no doubt that satisfactory living conditions can be assured.

### ***Other matters raised in the representations***

- 12.46 It is conceivable that that if these appeals are dismissed, the Appellants could bring forward proposals that exclude housing provision altogether [6.6, 9.16]. This would not be inconsistent with the King's Cross Development Brief, which does not stipulate that housing must be provided here [3.14], while the increased housing expectation on the London Plan refers to the Opportunity Area as a whole, rather than to the Triangle Site in particular [9.3]. Nonetheless, there is no "fall-back" position in this case that the Appellant could rely upon. This is because any alternative development, whether including or excluding housing, would require permission in its own right and would stand or fall on its individual merits within the framework of Section 38(6) of the 2004 Act. The risk to housing provision is not therefore a factor to which weight should, I consider, be attributed.
- 12.47 The responses to consultation and publicity indicate a good measure of support for the proposals [10.2, 10.6, 10.9] as well as objection. Points concerning the suitability of the site for housing, the appropriateness of providing more social rented housing and the attractiveness of the proposed amenity space have been covered in my commentary on the main considerations. Government Office for London expressed the view, on Camden's handling of the Main Site application, that its report had included a very thorough and comprehensive consideration of the proposals [6.44]. Having read the representations alongside the respective Council's Committee reports on the Triangle Site [10.9], I find no reason to come to any different conclusion in this case. In particular, paragraph 1.10.5 of Camden's Report refers to the conclusion in the Environmental Statement that the retail and leisure components on the Combined Sites are likely to have a major beneficial impact on the social capital of the CIZ and WIZ. Paragraph 1.12.75 also notes that reductions in parking provision have been negotiated since the proposals were originally submitted but that the subject is one that will need to be finalised at detailed approval stage. The suggested conditions facilitate this [11.1]. Overall, I find nothing in the representations that are of such significance as to alter my conclusions on the main considerations or, in themselves, to warrant the refusal of planning permission.

## ***The proposed conditions and obligations***

### *Conditions*

- 12.48 In the event that the Secretary of State is minded to allow both of the appeals and grant planning permissions, I attached at Appendix C to this Report a list of recommended conditions (*with, for information purposes only, the Councils' reasons for seeking their imposition*). These have evolved through a process of discussion between the parties to the Inquiry [11.1], and those in Appendix C include amendments that were considered and agreed in open session on the penultimate sitting day, primarily to ensure compliance with Circular 11/95 advice. They are listed under summary subject headings, and for the most part deal with normal development control matters that are unexceptional. I comment only on those that might be considered otherwise.
- 12.49 Conditions 1, 2, 4 and 5 vary the statutory time periods for submission of reserved matters and commencement. The definition of "reserved matters" for the purposes of these appeals is set out in the "definitions" section at the end of the conditions list. In effect, these four conditions require development to be begun not later than 8 years from the date of the permission or two years from the final approval of the first reserved matters, whichever is the later. The latter could, as conditions 4 and 5 indicate, be after 14 years, or longer if there are delays in actually gaining approval of the details in accordance with condition 3. This compares with the expected duration of development on the combined sites of 21 years, and in that context, does not seem unreasonable. I understand that the Triangle Site will, until development is about to take place, accommodate a Construction Training Centre displaced from the Main Site. Permission has apparently been granted for this, so the Triangle site would be unlikely to stand vacant or derelict. Circular 08/05 commends the variation of statutory time limits in appropriate cases, and I therefore see no obstacle to doing so here [11.1].
- 12.50 Condition 10 would deal suitably with sustainable construction in support of the Planning and Climate Change supplement to PPS1. It should be read in conjunction with the "All Parties" Agreement, which includes clauses to ensure that implementation tracks good practice current at the time the Triangle Site is developed. Condition 12 touches upon the subject of inclusivity. The subject is covered in greater detail by the "All Parties" Agreement. This includes provision for an "inclusive design champion", requires development to follow inclusive design principles and establishes the aim of ensuring that all of the housing is developed to "lifetime home" standards. Specific provision for wheelchair accessible homes was a matter of particular concern to the Amenity Groups [11.1]. However, while wheelchair accessible housing is suitable for some, lifetime homes are capable of adaptation for all.
- 12.51 Conditions 17-20 control development content [1.5]. Condition 19 includes a reference to Appendix D to this Report. The reference letter might need to be changed depending upon the format of the Secretary of State's own decision.
- 12.52 Conditions 27-30 deal with noise. Condition 28 includes the words "special attention shall be given to...." and I have modified condition 29 to include the word "normally". This is because there may be circumstances in which noise might exceed the limits proposed but would be beyond the control of the Appellants. It was explained to me that this might, for example, include the

passing of a train that, through wear, had developed flat spots on one or more of its wheels. The conditions guide the design of the attenuation scheme rather than invoke a penalty if the noise limit is, for such reasons, exceeded. To that extent I consider the terminology I recommend to be neither unacceptably vague nor unenforceable and I regard the conditions as acceptable.

- 12.53 Lastly, if the Secretary of State shares my views on the subject of recycling of funding for affordable housing, the wording of the Obligation is such that there is no need for a condition triggering affordable housing offer B.

### *Obligations*

- 12.54 The planning Obligations, like the proposed planning conditions, have considerable resonance with those for the main site. It seem to me that they cover matters to which the Secretary of State is likely to attach importance, especially with regard to affordable housing, and that they accord with policy guidance in Circular 5/2005. Islington made clear to me that, irrespective of the outcome of these appeals, it had no intention of signing up to an Obligation on affordable housing the substance of which it was fundamentally opposed to. However, that Council has not criticised the actual formulation of the Affordable Housing Obligation and, irrespective of Islington's stance, I have no reason to believe that the Obligations will not deliver what is promised [5.4, 5.5].
- 12.55 Should the Secretary of State be minded to allow the appeals but for details of the affordable housing offer in the Obligations (such as to alter the 15 year period for recycling of staircasing receipts), the Appellants wish the Secretary of State to know that they are amenable to considering modifications if invited to do so.

### **Overall conclusions**

- 12.56 The parties have indicated that these appeals raise questions of more than local significance [1.1, 8.16]. In that connection, among the matters discussed at the Inquiry I consider that three warrant specific mention. The first is whether the aspirations to develop a sustainable mixed community here through the provision of a wide range of tenures, rather than meet in the fullest possible measure identified housing needs, will result in a widening social divide rather than a narrowing one (paragraphs 12.25 -12.28 and 12.34 - 12.36 above). On the balance of evidence, I am content that the likelihood is the latter rather than the former. The second is whether the proposed intermediate forms of tenure truly represent affordable housing in the PPS3 sense. Much depends in this regard on the adequacy of the proposals for grant and subsidy recycling and whether the arbitrary 15 year period proposed for such recycling is sufficiently enduring having particular regard to it being private rather than public funding that would be involved (paragraphs 12.8 12.37, 12.38 above). In my estimation the proposals are compliant with the now current PPS3 definition of affordable housing. Even if that were not held to be the case, the proposals would provide a seamless transition of tenures, ranging from social rented through to full open market housing and thereby go some way to maximising housing choice for new and existing residents. The third is the adequacy of the arrangements for decision making on large scale projects spanning administrative boundaries (paragraph 12.6 above). In this

respect, it is notable that there is provision for joint plan making by Local Planning Authorities but not for the determination of individual planning applications either on a case by case basis or, as may become increasingly significant in the future, at sub-Regional level across complete housing market areas. This inevitably leads to uncertainties and delays when, as here, the Councils concerned do not share a united perspective. It is not, however, a matter that has any direct bearing on the Secretary of States consideration of these proposals.

- 12.57 Those matters aside, taking the Main Site and Triangle Site together, the proposals would contribute to providing 834 new affordable homes in an area of regeneration where the respective Councils' UDP policies and the joint King's Cross Development Brief had required no more than 1,000 home in total, equating under the GLA's 50% target to just 500 affordable homes.
- 12.58 Overall housing expectations from the Opportunity Area as a whole have been raised in the recently adopted London Plan Further Alterations but, with the Main Site proposals already permitted and provision elsewhere within the Opportunity Area, it cannot be said that the proposals for the Triangle Site are deficient. The 84 affordable units proposed here are fewer than the 100 (applying the same GLA 50% target figure) that the Triangle Site alone may have potential to contribute, but housing has never been a requirement on this site, only an aspiration if suitable environmental conditions can be ensured. Given also the importance attaching in the King's Cross Opportunity Area to planning objectives other than maximising housing delivery, I regard the amount of housing, and the proportion of affordable housing, proposed in the appeal schemes to be entirely acceptable.
- 12.59 In simple housing land use planning terms that might be said to be the end of the matter. However, the spatial planning system under the 2004 Act is concerned with delivering outcomes rather than solely regulating the development and use of land, and the primary objective in this case is to establish a sustainable mixed community. This, it seems to me, applies not to the Triangle Site in isolation, but to the much more ambitious project of regenerating the King's Cross Area as a whole, incorporating not just the Opportunity Area but also the neighbouring existing communities. As PPS3 recognises, spatial planning in this sense demands much more detailed investigation of housing mix and tenure than simply imposing greater amounts of social rented housing. Spatial planning is progressing with increasing momentum in London, but for Camden and Islington the only component currently in place is the London Plan. The process is to be carried forward through Strategic Housing Market Assessment, but it is likely to be some considerable time before such assessment will be able to identify needs and demand at neighbourhood level in this part of London. Development of the Triangle Site cannot be delayed until that process is completed and nor, in my view, should it be. This is because although development may not take place until the post 2015 period, important decisions have to be made now about the level of infrastructure provision and other physical, economic and social relationships to the Main Site. It seems to me that the developers have gone to considerable effort to discuss the appropriate housing mix with the Councils and the local communities. While significant differences remain with the latter, I consider that the developers have produced an exemplary range of provision that, especially with regard to the intermediate housing sector, fully reflects

the principles advanced in PPS3 and its daughter document Delivering Affordable Housing. Conversely, Islington's eleventh hour objection, while plainly based on a misunderstanding and misapplication of London Plan policy and targets, seems to me to have derived largely from the GLA criticism, rather than constructive guidance, that its nascent Core Strategy met with at Examination stage.

12.60 Having considered these and all other matters raised at the Inquiry and in the representations, I conclude that the proposals accord with the statutory development plan for the area when read as a whole, and that there are no material considerations of sufficient importance to warrant a contrary decision. The affordable housing offer is acceptable, the noise environment of the site will be satisfactory and the scheme, if permitted, would suitably complement the proposals on the Main Site for the regeneration of this nationally significant area of London.

**12.61 Recommendations:**

12.62 I recommend that both Appeals A and B be allowed and that outline planning permission be granted for:

Mixed use development of part of the former railway lands within the Camden King's Cross Opportunity Area and an Islington Area of Opportunity. The development comprises: residential; shopping, food and drink and professional services within the A1, A2, A3 and A4 use classes; a health and fitness centre (use class D2) incorporating medi-centre facilities, a crèche and community facilities (use class D1); amenity and open space; habitat area; recycling and other ancillary uses; parking; highway works to provide access; and other supporting infrastructure works and facilities

Subject to the conditions listed in Appendix C to this Report.

**D Lavender**

**Inspector.**

## Appendix A: APPEARANCES

### FOR THE COUNCIL OF THE LONDON BOROUGH OF ISLINGTON:

Ms Morag Ellis Queen's Counsel, instructed by  
Ms L Round, Director of Corporate Resources  
Islington London Borough Council

She called  
Mr C Clarke BA Hons, MA, MRTPI Founder, Terence O'Rourke Ltd, Planning and  
Environmental Consultancy  
Mr H Lacey BSc(Hons) Development Manager, Pioneer Property  
Services Ltd, Housing and Development  
Consultants

### FOR THE COUNCIL OF THE LONDON BOROUGH OF CAMDEN:

Mr Paul Brown Of Counsel, instructed by  
Mr S Ashworth of Denton, Wilde, Sapte Solicitors

He called  
Mr R Kirby BSc, MSc, Dip TP King's Cross Applications Team Manager

### FOR THE APPELLANT:

Mr Keith Linblom Queen's Counsel, instructed by  
Lovells  
Atlantic House, Holborn Viaduct, London, EC1A  
2FG

He called  
Mr S Robinson DipTP, MRTPI Executive Director, CB Richard Ellis Property  
Consultants  
Ms C Dickinson Director, RPS Planning  
BSc(Hons), DipTP, MRTPI  
Mr C English Partner, The English Cogger LLP, Independent  
BSc(Hons), CEng, MIME Acoustic Consultancy

### FOR THE KING'S CROSS RAILWAY LANDS GROUP and THE CALLEY RAIL GROUP:

Mr P Jeffries  
He called  
Mr M Edwards Co-Chair of the King's Cross Railway Lands  
Group  
Ms D Shelley Chair of the CALLY Rail Group

### INTERESTED PARTY:

Mr W Perrin Local Resident, Flat 3, 4 Rufford Street, London  
N1 OAP

## Appendix B: Documents

### General Application Documents\*

CD1.1	Camden Planning Application Form 2004/2311/P and covering letter
CD1.2	Islington Planning Application Form P041261 and covering letter
CD1.3	Development Specification (April 2004)
CD1.4	Revised Development Specification (August 2005)
CD1.5	Urban Design Statement
CD1.6	Statement of Community Engagement Document 1 (January 2004)
CD1.7	Statement of Community Engagement Document 2 (January 2004)
CD1.8	Statement of Community Engagement Document 3 (January 2004)
CD1.9	Urban Design Guidelines - North
CD1.10	Urban Design Guidelines - South
CD1.11	Implementation Strategy (April 2004)
CD1.12	Environmental Sustainability Strategy (April 2004)
CD1.13	Public Realm Strategy (April 2004)
CD1.14	Code of Construction Practice (April 2004)
CD1.15	Regeneration Strategy (April 2004)
CD1.16	Environmental Statement Volume 1 (May 2004)
CD1.17	Environmental Statement Volume 2 (May 2004)
CD1.18	Environmental Statement Volume 3 (May 2004)
CD1.19	Environmental Statement Volume 4 (May 2004)
CD1.20	Environmental Statement Non-Technical Summary (May 2004)
CD1.21	Transport Assessment (April 2004)
CD1.22	Green Travel Plan (April 2004)

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\* CD = Core Document, ID = Inquiry Document

CD1.23	Illustrative Highway Proposals (April 2004)
CD1.24	Retail Impact Assessment (March 2004)
CD1.25	Planning Statement (May 2004)
CD1.26	Triangle Site - Explanatory Statement (April 2004)
CD1.27	Environmental Statement Volume 5 - Supplement (September 2005)
CD1.27A	Environmental Statement Volume 6 – Triangle Supplement on Noise, Vibration and Wind Turbulence (January 2008September 2005)
CD1.28	Environmental Statement Revised Non-Technical Summary (September 2005) (in substitution for Document 1.20)
CD1.29	Revised Code of Construction Practice (September 2005) (in substitution for Document 1.14)
CD1.30	Revised Illustrative Highway Proposals (September 2005) (in substitution for Document 1.23)
CD1.31	Access and Inclusivity Strategy (September 2005)
CD1.32	Illustrative Scheme Plan, AO size
CD1.33	Energy Assessment (September 2005)
CD1.34	Planning Appeal Form - Islington Council
CD1.35	Planning Appeal Form - Camden Council
ID8.1	Core Documents List (superseded)
ID8.2	Appearance lists for each day of the Inquiry
ID8.3	Statement of Common Ground
ID8.4	Inspector's Pre-Inquiry Briefing Note
ID8.5	Bundle of third party representations received in response to publicity given to the appeals
ID8.6	Letter (undated) handed in at the opening of the Inquiry from the Chair of Somertown and St Pancras Art
ID8.7	Composite version of London Plan, consolidated with Alterations since 2004
ID8.8	Inspector's Adjournment Note
ID8.9	Inspector's Adjournment Note on Conditions
ID8.10	Joint Statement from Government Office for London and the Greater London Authority
ID8.11	List of suggested conditions, agreed between the parties, following meeting on 28 March 2008 (with 2 Annexes
ID8.12	Letter from Lovells dated 4 April 2008 concerning interpretation of "reserved matters"

## Appellant Documents

CD1.36	Draft Section 106 Agreement (v6) - submitted by Appellants, 22 November 2007
CD1.37	Draft Section 106 Agreement (v7) - submitted by Appellants, 10 January 2008
CD1.38	Letter from Argent plc to Islington Council, 7 December 2006
CD 2.4	Government Office for London, Direction on UDP Policies, 24 September 2007
CD 2.10	Report of the Shared Equity Task Force, December 2006
CD 3.1	The London Plan, February 2004
CD 3.2	Early Alterations to the London Plan, December 2006
CD 3.3	Draft Further Alterations to the London Plan, September 2006
CD 3.4	Draft Mayor's Housing Strategy, September 2007
CD 3.5	Letter from Head of Planning Decisions to Camden Council, 10 September 2007
CD 3.6	Letter from Head of Planning Decisions to Camden Council, 13 December 2007
CD 3.7	Letter from Senior Strategic planner to Camden Council, 4 October 2007
CD 3.10	London Plan Annual Monitoring Report 3, February 2007
CD 3.19	Examination in Public Panel Report, July 2003
CD 3.20	Letter from Mr Giles Dolphin to CBRE, 21 January 2008
CD 7.1	King's Cross Railway Lands Group v London Borough of Camden Interested Parties [2007] EWHC 1515 (Admin)
CD 7.2	King's Cross Railway Lands Group v London Borough of Camden Interested Parties - Transcript of Day 1, 24 May 2007
CD 7.3	King's Cross Railway Lands Group v London Borough of Camden Interested Parties - Transcript of Day 2,

	24 May 2007
CD7.12	Section 106 Agreement, Main King's Cross Site
CD7.13	Decision letter sent on behalf of the Secretary of State to Circadian Ltd re Lots Road Power Station, 30 January 2006 and Inspectors Report, 17 August 2005
CD7.14	Housing Corporation, Recycled Capital Grant Funds and Disposal Proceeds Funds Review, Consultation Paper 2005
CD7.15	Housing Corporation, Recycled Capital Grant Fund, Consultation Paper, 2007
CD7.16	Housing Corporation, Have you heard about Open Market Homebuy? 2006
CD7.17	National Audit Report, A foot on the Ladder; Low Cost Home Ownership, July 2006
CD7.18	Decision letter sent on behalf of the Secretary of State to St George South London Ltd re Vauxhall Tower, 14 July 2005 and Inspector's Report, 27 September 2004
CD7.19	East Planning Committee Report on PIMS House 1-20 Mildmay Avenue and Service House 3 Mildmay Avenue, Islington, London dated 15 January 2007
CD7.20	West Planning Committee Report on 14-18 and 20-26 Market Road, Islington, London dated 19 April 2007
ID9.1	Opening Statement by Mr Lindblom
ID9.2	Mr Robinson's written evidence and summary
ID9.3	Ms Dickinson's written evidence, appendices and summary
ID9.4	Ms Dickinson's written response to Inspector's pre-Inquiry briefing note
ID9.5	Mr English's Note on Noise and Vibration
ID9.6	Letter dated 9 March 2006 from the Assistant Director of Planning at Islington LBC to the Director of Culture and Environment at Camden LBC
ID9.7	Letter dated 1 November 2004 from GLA Head of Decisions to Director of Environment and Conservation at Islington LBC
ID9.8	Town and Country Planning (Mayor of London) Order 2000
ID9.9	Response to Inspector's Adjournment Note
ID9.10	Appeal decision APP/A5270/A/06/2032281 for 437 Uxbridge Road, Ealing
ID9.11	Camden LBC Decision notice on Main Site, dated 22 December 2006
ID9.12	GOL letter dated 11 April 2006 responding to reference of main site under the Town and Country Planning (Shopping Direction)(No2) Direction 1993
ID9.13	Letter dated 28 March 2008 requesting recovery
ID9.14	Response by Ms Dickinson to Mr Lacey's briefing

	note on intermediate tenures
ID9.15	Letter from GLA to PINS dated 2 April 2008
ID9.16	Explanatory Note on the submitted S106 Obligations
ID9.17	Final S106 Other Matters
ID9.18	Final S106 Affordable Housing
ID9.19	Mr Lindblom's closing statement

### Islington Documents

CD 2.6	UK Treasury/Office of Government Commerce, Guide for the Disposal of Surplus Property, November 2005
CD 2.7	Strategic Housing Market Assessment Practice Guidance Version 2, August 2007
CD 2.8	Housing Green Paper "Homes for the Future: More Affordable, More Sustainable", 23 July 2007
CD 2.9	ODPM Circular 5/05, 18 July 2005
CD 3.8	Mayor's Housing SPG, November 2005
CD 3.9	GLA Planning Report PDU/LDF19/LDD01101 and letter (response to Islington Council Consultation Draft Core Strategy) 23 February 2006
CD 3.11	GLA Press Release - "Boroughs must learn the lessons of Islington's housing mistakes, says Mayor", 2 July 2007
CD 3.12	GLA Planning Report PDU/0347/01, 15 January 2003
CD 3.13	GLA Planning Report PDU/0347/01, 27 October 2004
CD 3.14	GLA Planning Report PDU/0347/02, 16 November 2005
CD 3.15	GLA Planning Report PDU/0347/03, 23 March 2006
CD 3.16	Letter from Mr Giles Dolphin (GLA) to Mr Bob West (LBC), 18 November 2003
CD 3.17	Draft London Plan, June 2002
CD 3.18	Examination in Public Panel Report to the Draft Further Alterations to the London Plan, September 2007
CD 5.1	Islington Unitary Development Plan, June 2002
CD 5.2	One Islington Corporate Plan 2006-2009
CD 5.3	One Islington Best Value Performance Indicators 2006-2007

CD 5.4	Performance Review Committee, 2 July 2007
CD 5.5	Affordable Housing, April 2003
CD 5.6	West Area Committee Report, 25 November 2003
CD 5.7	West Area Committee Report, 13 January 2004
CD 5.8	Executive Committee Report, 5 October 2006
CD 5.9	Notice of Call-in, 12 October 2006
CD 5.10	Overview Committee Report, 19 October 2006
CD 5.11	Overview Committee Minute to meeting of 19 October 2006
CD 5.12	Affordable Housing, Guidance Note, October 2006
CD 5.13	Islington's Core Planning Strategy, Submission Draft, March 2007
CD 5.14	West Area Planning Sub-committee Report & Minute, 12 February 2007
CD 5.15	West Area Planning Sub-committee Report & Minute, 18 April 2006
CD 5.16	Mayor's Letter (and attached Report) on draft Core Strategy, 18 April 2007
CD 5.17	Examination in Public Inspector's Notes of Exploratory Meeting, 5 June 2007
CD 5.18	Advice of Miss A Williams, Counsel, 14 May 2007
CD 5.19	Council Committee Report & Minute, 26 June 2007
CD 5.20	West Area Planning Sub-committee Report & Minute, 10 July 2007
CD 5.21	Refusal Notice, 17 July 2007
CD 5.22	Letter to Planning Inspectorate on Decision Notice, 3 December 2007
CD 5.23	Letter from Islington Council to Appellant, 30 July 2007
CD 5.24	Islington's Annual Monitoring Report 2007
CD 5.25	Islington Preferred Options draft Core Strategy, January 2006
CD 5.26	Islington Housing Strategy 2004-2007

CD 7.4	Housing Corporation, National Affordable Housing Programme Prospectus 2008/2011
CD 7.5	Housing Corporation, Atlas Advisory Team, and English Partnerships, "Cascades: Improving the Certainty in the Delivery of Affordable Housing for Large-scale Development?", September 2007
CD 7.6	Decision letter sent on behalf of the Secretary of State to Bovis Homes Ltd re Filton Northfield Appeal and Inspector's Report, 19 June 2007 (Appeal closed 28 February 2007)
CD 7.7	2007 Queens Speech, 6 November 2007
CD 7.8	Housing and Regeneration Bill Background Briefing Note to the Queen's Speech, 6 November 2007
CD 7.9	Housing Corporation, Capital Funding Guide, 2007
CD 7.10	Fordham Associates Ltd, Islington Housing Needs Survey 2002
CD 7.11	Outside Research Services Ltd, Greater London Housing Requirements Study 2004
ID10.1	Opening Statement by Ms Ellis
ID10.2	Mr Clarke's written evidence and summary
ID10.3	Mr Lacey's written evidence, summary and appendices
ID10.4	Mr Lacey's written response to the Inspector's Pre-Inquiry Briefing Note and revised draft S106 (15 Feb version)
ID10.5	Mr Lacey's final briefing note on intermediate tenures, dated 27 March 2008
ID10.6	Ms Ellis's closing statement

### Camden Documents

CD 4.1	Camden Unitary Development Plan Alteration Number 1, May 2003
CD 4.2	Camden Unitary Development Plan, June 2006

CD 4.3	Planning Guidance, December 2006
CD 4.4	Planning Sub-committee Report & Minute, 18 October 2007
CD 4.5	Planning Sub-Committee Report, 8/9 March 2006
CD 4.6	DTZ Briefing Note (Financial assessment), 8 March 2006
CD 4.7	DTZ letter to Camden Council, 29 November 2007
CD 4.8	Camden Housing Strategy 2005-2010
CD 4.9	Camden's Housing Need Survey, Fordham Research, January 2004
CD 6.1	King's Cross Opportunity Area Planning and Development Brief, December 2003 (Camden) and January 2004 (Islington)
ID11.1	Opening Statement by Mr Brown
ID11.2	Mr Kirby's written evidence and summary
ID11.3	Note dated 13 February 2008 from Camden LBC Environmental Health Team, commenting on Further Environmental Information (Noise)
ID11.4	Response to Adjournment Note
ID11.5	Report to the Council's Executive dated 28 February 2008
ID11.6	Letter dated 1 April 2008 from Denton, Wilde, Sapte requesting recovery
ID11.7	Extract from "Principles for a Human City"
ID11.8	Report on Main Site planning application and covering note identifying key passages and paragraphs
ID11.9	Mr Brown's closing statement

**KXRLG/CALLY/Other Interested Parties' Documents**

ID12.1	Opening Statement by Mr Jeffries
ID12.2	Mr Edwards's written evidence, summary, supplementary written evidence and appendices
ID12.3	Ms Shelley's written evidence , summary and appendices (DS1-

	9) and consultation response on Further Environmental Information
ID12.4	Extract from London Development Database (% affordable in 2006/07)
ID12.5	Three bundles of background documents
ID12.6	Argent (King's Cross) Limited Main Site Baseline Monitoring Report
ID12.7	BS 8233:1999
ID12.8	Mr Perrin's written submission and appendices
ID12.9	Planning History of Cemex Batching Plant
ID12.10	Mr Perrin's Response to Inspector's Adjournment Note
ID12.11	Proposed Amendments to Conditions
ID12.12	Mr Jeffries' closing statement
ID12.13	Union Railways (North) Ltd

**Appendix C: Recommended Planning Conditions**

<b>COMMENCEMENT</b>	
1	<p>The development must be begun not later than either 8 years from the date of this permission or two years from the final approval of the first reserved matters application, whichever is the later.</p> <p><b>Reason:</b> In order to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 (as amended).</p>
2	<p>The permission shall lapse unless the first Reserved Matters Application is made within eight years of the date of this permission.</p> <p><b>Reason:</b> In order to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 (as amended).</p>
<b>APPROVAL OF RESERVED MATTERS</b>	
<b>GENERAL</b>	
3	<p>Approval of the Reserved Matters shall be obtained from the Local Planning Authority in writing prior to the commencement of any development to which those Reserved Matters relate and the development shall be carried out only as so approved.</p> <p><b>Reason:</b> In order to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 (as amended).</p>
4.	<p>No later than 12 years following the date of this permission an application or applications shall have been submitted to the Local Planning Authority for the approval of all Reserved Matters.</p> <p><b>Reason:</b> In order to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 (as amended).</p>
5.	<p>No Reserved Matters approval shall be implemented more than 14 years from the date of this permission or two years from the date of the final approval of any Reserved Matters Application, whichever is the later.</p> <p><b>Reason:</b> In order to comply with the provisions of Section 92 of the Town and Country Planning Act 1990 (as amended).</p>
<b>LANDSCAPING AND TREES</b>	
6.	<p>The details of the landscaping to be submitted as part of the applications for Reserved Matters shall include;</p> <p style="margin-left: 20px;">a) the design of building foundations and the</p>

	<p>layout, with the dimensions and levels, of service trenches and other excavations on site in so far as these items will affect any trees adjoining that part of the site</p> <p>b) New tree and other planting, earth works, ground finishes, top soiling, levels, drainage, including falls and drain types;</p> <p>c) The treatment of land within the Habitat Area shown on plan TS004 Rev K.</p> <p>d) The central amenity space with planting as shown on TS006.</p> <p>and all works shall only be carried out in accordance with the details so approved</p> <p><b>Reason:</b> To ensure a comprehensive and sustainable development, to ensure good design, to ensure a minimal impact on existing trees, to contribute to biodiversity and to ensure that the details accord with the assessment in the Environmental Assessment, in accordance with policies within the Statutory Development Plan.</p>
7.	<p>Applications for approval of Reserved Matters including landscaping shall include for specific approval a programme for commencing and completing the planting and laying out, and the detailed scheme (s) so approved shall be carried out only in accordance with the approved programme.</p> <p><b>Reason:</b> To ensure a comprehensive and sustainable development, to ensure good design, to ensure a minimal impact on existing trees, to contribute to biodiversity and to ensure that details accord with the assessment and Environmental Assessment, in accordance with policies within the Statutory Development Plan.</p>
8.	<p>Any trees or areas of planting which, within a period of five years from the completion of the relevant phase of landscaping, die, are removed or become seriously damaged or diseased, shall be replaced as soon as is reasonably possibly and in any case, by no later than the end of the following planting season, with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.</p> <p><b>Reason:</b> To ensure a comprehensive and sustainable development, to ensure good design, to ensure a minimal impact on existing trees, to contribute to biodiversity and to ensure that details accord with the assessment and Environmental Assessment, in accordance with policies within the Statutory Development Plan.</p>
9.	<p>Where steps are to be constructed within the</p>

	<p>landscaping to change level, gentle inclines and ramps (at a gradient of 1:20 or less) and/or lifts shall also be incorporated, to provide an equally commodious alternative for all members of the public.</p> <p><b>Reason:</b> To ensure a comprehensive and sustainable development, to ensure good design, to ensure a minimal impact on existing trees, to contribute to biodiversity and to ensure that details accords with the assessment in the Environmental Assessment, in accordance with policies within the Statutory Development Plan.</p>
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**ENVIRONMENTAL SUSTAINABILITY PLAN**

<p>10.</p>	<p>Relevant applications (or groups of related applications) for Reserved Matters approval in respect of buildings shall be accompanied by an Environmental Sustainability Plan. The Environmental Sustainability Plan shall explain:</p> <ul style="list-style-type: none"> <li>a. How the proposed building design(s) realise(s) opportunities to include design and technology energy efficiency measures;</li> <li>b. The reduction in carbon emissions achieved through these building design and technology energy efficiency measures, compared with the emissions permitted under the national Building Regulations prevailing at the time of the application(s) for approval of reserved matters are submitted;</li> <li>c. The specification for green and/or brown roofs on buildings within Blocks A, B and C;</li> <li>d. How energy shall be supplied to the building(s), highlighting:             <ul style="list-style-type: none"> <li>i. How the building(s) relate(s) to the strategy for district heating and combined heat and power across the King's Cross Central development.</li> <li>ii. The assessment of the cost-effectiveness and the reliability of the supply chain for bio fuels (<i>referred to in paragraph 12 of page 35 of the "All Parties" S106 Agreement</i>)</li> <li>iii. Any other measures to incorporate renewables</li> </ul> </li> <li>e. How the proposed building(s) have been designed to achieve a BREEAM and/or Eco Homes rating of "very good" (or an equivalent assessment method and rating) or better;</li> <li>f. the incorporation of bird boxes, bat roofs and other wildlife features on buildings</li> </ul> <p><b>Reason:</b> To ensure a comprehensive and sustainable development, to ensure good design,</p>
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	to ensure a minimal impact on existing trees, to contribute to biodiversity and to ensure that the details accord with the assessment in the Environmental Assessment, in accordance with policies within the Statutory Development Plan.
<b>EARTHWORKS AND REMEDIATION PLAN</b>	
11.	<p>Relevant applications (or groups of related applications) for approval of the Reserved Matters shall be accompanied by an Earthworks and Remediation Plan to deliver appropriate site levels and ground conditions for that part of the development. All work shall be carried out in accordance with the Earthworks and Remediation Plan as approved.</p> <p><b>Reason:</b> To ensure the development is carried out in accordance with the assessment and the conclusions of the Environmental Impact Assessment in accordance with policies within the statutory Development Plan.</p>
<b>ACCESS STATEMENT</b>	
12.	<p>Relevant applications for approval of Reserved Matters pursuant to this permission shall be accompanied by an Access Statement. Each Access Statement shall:</p> <ol style="list-style-type: none"> <li>a. Address the relevant design principles set out in the Access and Inclusivity Strategy dated September 2005 and update the Access Audit included at Annex C of that strategy;</li> <li>b. Highlight any areas where technical or other constraints have prevented or constrained the application of these design principles;</li> <li>c. Include a project programme for that building or phase, to identify the key stages which important decisions affecting inclusivity and accessibility will be made.</li> </ol> <p><b>Reason:</b> To ensure a comprehensive and sustainable development and to ensure good design for the development in accordance with the Environmental Impact Assessment and in accordance with the policies of the Statutory Development Plan.</p>
<b>SERVICING STRATEGY</b>	
13.	<p>Servicing shall take place in accordance with plans TS003, TS004 and TS005 unless otherwise agreed in writing with the Local Planning Authority.</p> <p><b>Reason:</b> To ensure safe, efficient and sustainable access to and protect amenities in the development in accordance with the Environmental Impact Assessment and in accordance with the policies of the Statutory Development Plan.</p>

<b>DETAILS REQUIRED BY CONDITION</b>	
<b>STRUCTURES</b>	
14.	<p>Details of the siting of buildings as shown on plans TS004 revision K to TS007 revision K inclusive shall be submitted to the Local Planning Authority and approved in writing prior to any works taking place in relation to such buildings. All works should be carried out in accordance with the details as approved.</p> <p><b>Reason:</b> To ensure a comprehensive and sustainable development and to achieve good design, to ensure the development is carried out in accordance with the assessment and conclusions of the Environmental Impact Assessment, in accordance with policies within the Statutory Development Plan.</p>
<b>FLOOR PLANS ETC</b>	
15.	<p>Details and particulars (including floorspace figures, floor plans and layouts of the uses), and the vehicle and other servicing and access arrangements, including provision of parking to be accommodated in built accommodation, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details as approved.</p> <p><b>Reason:</b> To ensure a comprehensive and sustainable development to ensure safe and efficient access, to achieve good design and protect amenities and to ensure the development is carried out in accordance with the assessments and conclusions of the Environmental Impact Assessment and to ensure the development complies with the policies and standards set out in the Statutory Development Plan.</p>
<b>REFUSE STORAGE AND COLLECTION</b>	
16.	<p>Details and arrangements for storage and collection of refuse, including location, design, screening, operation and inclusion of facilities for the storage of recyclable materials, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details as approved.</p> <p><b>Reason:</b> To ensure good design, to safeguard the amenity of the area and ensure the development is sustainable and has adequate facilities, in accordance with the Environmental Impact Assessment and in accordance with Policies contained within the Statutory Development Plan.</p>

<b>DEVELOPMENT TO BE CARRIED OUT IN ACCORDANCE WITH PERMISSION</b>		
<b>PARAMETER PLANS AND DEVELOPMENT SPECIFICATION</b>		
17.	<p>The development shall be carried out in accordance with the Development Parameters shown on the Revised Parameters Plans and as described in the specified paragraphs of the Revised Development Specification dated August 2005 comprising:</p> <ul style="list-style-type: none"> <li>a. the access arrangements shown on drawings TS003 revision K together with paragraph 4.10;</li> <li>b. the lower ground level arrangements shown on drawing TS004 revision K together with paragraphs 4.11-4.15;</li> <li>c. the upper ground level arrangements shown on drawings TS005 revision K together with paragraphs 4.16-4.18;</li> <li>d. the garden level arrangements shown on drawing TS006 revision K including the maximum building heights shown, together with paragraphs 4.19-4.22;</li> <li>e. the upper level arrangements shown on drawing TS007 revision K including the maximum building heights shown together with paragraphs 4.23-4.25;</li> <li>f. the section shown on drawings TS008 revision E and TS009 revision E to the extent that they show indicative proposals only for the works and land uses, together with paragraphs 4.26 and 4.27.</li> </ul> <p><b>Reason:</b> The development is the subject of an Environmental Impact Assessment and any change to the development from the particulars assessed as above might have an impact that has not been identified and assessed. The requirements of this condition are to ensure a comprehensive and sustainable development, to achieve integration, regeneration and good design, in accordance with the assessment and conclusions of the Environmental Impact Assessment and in accordance with policies within the Statutory Development Plan.</p>	
<b>FLOORSPACE PERMITTED</b>		
18.	<p>The total floorspace constructed and used pursuant to this outline planning permission shall not exceed 26,600 sq m (gross external area). This total floorspace excludes:</p> <ul style="list-style-type: none"> <li>a. Plant, infrastructure and utilities forming part of supporting the development including substations, transformers, waste storage and ancillary recycling facilities</li> <li>b. Service access including a covered loading</li> </ul>	

	<p>bay</p> <p>c. Residential balconies</p> <p>d. Car and bicycle parking provided (with lifts and stairs) at lower ground level</p> <p><b>Reason:</b> The development is the subject of an Environmental Impact Assessment and any change to the development from the particulars assessed might have an impact that has not been identified and assessed. The requirements of this condition are to ensure a comprehensive and sustainable development, to achieve integration, regeneration and good design, in accordance with the assessment and conclusion of the Environmental Impact Assessment and in accordance with policies within the Statutory Development Plan.</p>
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**USES PERMITTED**

<p>19.</p>	<p>Notwithstanding the provisions of the Use Classes Order, permission is hereby granted only for the following uses;</p> <p>a. Residential use within Class C3</p> <p>b. Shopping, food and drink uses within Classes A1, A2, A3 and A4</p> <p>c. Crèche, day nursery, day centre and public hall uses within Class D1</p> <p>d. Health and fitness, indoor sport and leisure uses within Class D2</p> <p>e. Other miscellaneous uses, including car and bicycle parking, plant, sub-stations, transformers, waste storage and recycling facilities and a covered loading bay.</p> <p>The floorspace constructed and used pursuant to the planning permission shall not, unless otherwise agreed in writing by the Local Planning Authority, exceed in the case of any use or group of uses, the individual maximum floorspace figures are set out in Appendix D (floorspace schedule) attached, that table being read together with the notes 1-3 inclusive.</p> <p><b>Reason:</b> The development is the subject of an Environmental Impact Assessment and any change to the development from the particulars assessed might have an impact that has not been identified and assessed. The requirements of this condition are to ensure a comprehensive and sustainable development, to achieve integration, regeneration and good design, in accordance with the assessment and conclusion of the Environmental Impact Assessment and in accordance with policies within the Statutory Development Plan.</p>
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20.	<p>The residential floorspace constructed and used pursuant to this permission when completed shall include no more than 246 residential units within Class C3 of the Use Classes Order 1997 unless otherwise approved in writing by the Local Planning Authority.</p> <p><b>Reason:</b> To ensure appropriate provision for housing needs within a comprehensive and sustainable development, to achieve regeneration, integration and good design.</p>
<b>RESIDENTIAL AMENITY SPACE</b>	
21.	<p>The central amenity space shall be developed before the first occupancy of any dwelling at the same level hereby permitted and shall thereafter be kept available for use only by the residents of the development.</p> <p><b>Reason:</b> To ensure a sustainable development and good design and to safeguard the amenity of future occupiers of the development in accordance with the environmental impact assessment and to ensure the development complies with policy set out in the Statutory Development Plan.</p>
<b>RESIDENTIAL DAYLIGHT AND SUNLIGHT</b>	
22.	<p>Applications for the approval of Reserved Matters in relation to the residential accommodation shall be accompanied by details of how the proposed design applies the standards recommended in the Building Research Establishment's 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice 1991'.</p> <p><b>Reason:</b> To ensure a sustainable development and good design and to safeguard the amenity of future occupiers of the development in accordance with the Environmental Impact Assessment.</p>
<b>DRAINAGE INFRASTRUCTURE</b>	
23.	<p>The new drainage infrastructure within the site shall be designed such that the peak stormwater discharge to the existing combined sewers shall not be more than 67 litres per second.</p> <p><b>Reason:</b> To protect future occupiers of the development, services and utilities and prevent the pollution of the water Environmental Impact Assessment and Policy in the statutory development plan</p>
<b>GREEN AND BROWN ROOFS</b>	
24.	<p>New buildings constructed pursuant to the planning permission within Blocks A, B and C shall incorporate Green and/or Brown Roofs as specified in Paras 3.31 and 3.32 of the Revised Development Specification dated August 2005.</p>

	<p><b>Reason:</b> To ensure a comprehensive and sustainable development and to ensure that the development complies with the Environmental Impact Assessment and policy within the statutory development plan.</p>
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**CAR PARKING STANDARDS**

25.	<p>Unless otherwise agreed in writing by the Local Planning Authority, the development shall be constructed in accordance with the following:</p> <p>(a) Maximum car parking/storage standards;</p> <p style="padding-left: 40px;">i. Residential: an average of 0.40 spaces per unit across all unit types and tenures, to be provided within the lower ground level shown on drawing TS004 Rev K;</p> <p style="padding-left: 40px;">ii. Class D1/D2 uses: 1 space per 1:1000 sq m gross floor area;</p> <p style="padding-left: 40px;">iii. Classes A1-A4 inclusive uses; No provision other than for people with disabilities (to be agreed in writing by the Local Planning Authority at the Reserved Matters stage)</p> <p>(b) 4 visitor parking spaces to be provided to the north of block A as shown in drawing TS003 revision K</p> <p>(c) Any additional parking required by the Local Planning Authority by people with disabilities may be provided in addition to the above standards</p> <p>(d) The standards exclude provision for city car club spaces (such spaces may be provided in addition to the above) and the provision of service bays to be approved as part of the Reserved Matters for the development.</p> <p><b>Reason:</b> To ensure a comprehensive and sustainable development and to ensure that the development complies with the Environmental Impact Assessment and policy within the statutory development plan.</p>
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**CYCLE PARKING**

26.	<p>Unless otherwise agreed in writing by the Local Planning Authority, the development shall provide for the use of occupiers of the development cycle parking/storage for 246 bicycles at Lower Ground Level.</p> <p><b>Reason:</b> To ensure a comprehensive and sustainable development and to ensure that the development complies with the Environmental Impact Assessment and policy within the statutory</p>
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	development plan.
<b>NOISE</b>	
27.	<p>Prior to commencing any construction on the site, a base line noise monitoring survey shall be carried out and made available to the Local Planning Authority.</p> <p><b>Reason:</b> To ensure a sustainable development and to safeguard the amenities of the development and adjoining premises and the area generally and to ensure that the development is carried out in accordance with the Environmental Impact Assessment and Planning Policy within the Statutory Development Plan</p>
28.	<p>Before development commences, details shall be submitted to, and approved by, the Local Planning Authority to demonstrate that the noise impact of any plant or equipment to be installed on the site will meet the following standards:</p> <ol style="list-style-type: none"> <li>a. Noise levels at a point 1metre external to sensitive facades to be at least 5dB(A) less than the existing measurement (<math>L_{A90}</math>), expressed in dB(A) when all plant/equipment are in operation</li> <li>b. Where it is anticipated that any plant/equipment will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps) special attention to be given to reducing the noise level from that piece of plant/equipment at any sensitive façade at least 10dB(A) below the <math>L_{A90}</math>, expressed in dB(A).</li> </ol> <p>The development shall be carried out in accordance with the details, as approved unless otherwise agreed in writing by the Local Planning Authority.</p> <p><b>Reason:</b> To ensure a sustainable development and to safeguard the amenities of the development and adjoining premises and the area generally and to ensure that the development is carried out in accordance with the Environment Impact Assessment and in accordance with planning policy with the Statutory Development Plan.</p>
29.	<p>Before development commences, a scheme shall be submitted to, and approved by, the Local Planning Authority to demonstrate how the proposed dwellings would be insulated to a standard that will ensure that internal groundborne noise levels do not normally exceed 35 dB <math>L_{Amax(s)}</math>. The dwellings shall be constructed in accordance with the scheme, as approved, unless otherwise</p>

	<p>agreed in writing by the Local Planning Authority..</p> <p><b>Reason:</b> To safeguard the amenities of the development and to ensure that the development is carried out in accordance with the Environmental Impact Assessment and in accordance with Policies within the Statutory Development Plan.</p>
30.	<p>Construction of residential development within Blocks A and B (as shown on drawing TS006 revision K) shall not begin until approval in writing from the Local Planning Authority has been issued for a scheme to protect that development from environmental noise. The scheme shall be designed to ensure that, with windows closed and an alternative ventilation system provided:</p> <ul style="list-style-type: none"> <li>• external environmental noise within the bedrooms shall not exceed 35 dB<sub>LAeq, 8hr</sub> between 23:00 and 07:00 hours, and shall not normally exceed 45 dB<sub>LAm<sub>ax</sub>(f)</sub> at other times;</li> <li>• external environmental noise within other living rooms shall not exceed 40 dB<sub>LAeq, 16hr</sub> between 07:00 and 23:00 hours.</li> </ul> <p><b>Reason:</b> To safeguard the amenities of the premises and the area generally and to ensure that the development is carried out in the accordance of the Environmental Impact Assessment and Policies from the Statutory Development Plan.</p>

**DEFINITIONS**

For the purposes of these conditions the following words and phrases shall have the following meanings:

1. "Blocks" means the blocks labelled A, B and C shown on TS006 Rev K, TS007 Rev K, TS008 Rev E and TS009 Rev E.
2. "Reserved Matters" means details of:
  - a. layout except as set out in the Parameter Plans TS003-TS009
  - b. scale
  - c. appearance
  - d. access except as set out in Parameter Plan TS003
  - e. landscaping including surface treatments of the site, including the Amenity space at Garden Level shown on TS006 Rev K and the Habitat Area shown on TS004 Rev K0

3. "Annex A" means the table set out in the Development Specification and attached at as Appendix D.

**APPENDIX D**

King's Cross Triangle Site  
 Floorspace Schedule referred to in condition 19

Use	Total Floorspace Applied for (sq.m)	Notes
Residential	up to 21,100	To provide up to a maximum of 246 dwellings in Blocks A and B. The total of 21,100 sq m assumes 14,200 sq m within Block A and 6,900 sq m within Block B.
Retail (use classes A1/A2/A3/A4)	up to 2,500	Within Block B and beneath amenity space. All units to have frontage to York Way.
D1/D2 uses	up to 3,000	The application seeks permission for health and fitness/indoor sports facilities, including a swimming pool, within Block C, with the potential to also incorporate crèche/day nursery facilities; and day centre/public hall facilities.
TOTAL	up to 26,600	-

1. All figures are gross external
2. The floorspace figures exclude plant, infrastructure and utility elements which would form part of the development and for which planning permission is sought, for example substations, transformers, waste storage and recycling facilities, service access and a covered loading bay.
3. The floorspace figures exclude car and cycle parking/storage.
4. The floorspace figures exclude residential balconies.