

Proof of evidence of Michael Edwards

1. The witness

1.1 My name is Michael Edwards. I have worked within two minutes' walk of the Euston Road continuously since I first came to London as a student of Town Planning in 1964. I am Senior Lecturer in the Economics of Planning at University College London, hold the degrees of MPhil (Town Planning) and MA (PPE), was for many years a Chartered member of the RTPI and I direct a Masters degree accredited by the RTPI and RICS.

1.2 I am a co-chair of the King's Cross Railway Lands Group (the Group) and duly authorised to give evidence on its behalf. The King's Cross Railway Lands Group has set out its objections to the appeals in its statement of case. The Cally Rail Group has set out its grounds in its own statement of case.

1.3 Both groups oppose the appeals on similar grounds and have agreed to present a combined case. I shall give evidence on the type and amount of affordable housing that should be provided on the site or offsite if it is decided that the site has sufficient amenity for residential use but insufficient for affordable housing.

2. The King's Cross Railway Lands Group (KXRLG)

2.1 The Group was formed in 1987. Throughout its 20-year life, it has campaigned for the redevelopment of the Railway Lands in ways which offer housing and community benefits to local residents and enterprises, alongside facilities of national and international benefit. It has been involved in all stages of the development of planning policy for the area including Chapter 13 of the Camden UDP (now adopted) and the Joint Planning and Development Brief. The group has also made representations on successive versions of the London Plan and the Mayor's Sub-Regional Development Framework for Central London. It has been an objector to both the Main Site and Triangle Site applications.

2.2 As the leading member group of an informal consortium of groups, known as the King's Cross Think Again Campaign, the Group tried hard to persuade LB Camden to reconsider their provisional outline planning consents for the 'Main Site' and the Triangle made in March 2006. After LB Camden finalised their consent in November 2006, the Group led the unsuccessful judicial review of Camden's consent, taken on limited grounds in relation to the Main Site, in May 2007.

3. Summary of matters I will give evidence on

3.1 My evidence, on behalf of the KXRLG, concentrates on the inadequacy of the provision for affordable housing and especially of social housing to rent. In doing this I have assumed the Inquiry is considering a site where residential amenity has been proved.

3.2 However, the case put forward by CRG, and which KXRLG fully accepts, concludes that the Triangle may not be suitable for residential use and, even if it is allowed to have such uses, is not a place where those in the greatest housing need (and who thus have very little choice where they live) should be constrained to reside. If the Inquiry decides that the site does have some residential amenity, KXRLG would support off-site affordable housing provision.

4. Affordable housing on the Triangle and on the Main Site

4.0.1 First, however, it is necessary to consider the relationship between the Triangle site and the Main site.

4.0.2 The Appellants assert in their Grounds of Appeal against LBI's refusal of the application that 'the development of the Triangle Site and the Main Site would together deliver an appropriate affordable housing provision'.

4.0.3 LBC's consent for the Main Site, and therefore the amount of affordable housing which can be delivered on that site, is now, of course, a material fact. Obviously it is not for this Inquiry to consider, as such, whether there is an appropriate affordable housing provision contained in that consent.

4.0.4 However, it was the Appellants who chose to make separate outline applications for the Triangle Site and for the Main Site. Now they contend that the quantum of affordable housing on both sites should be taken together. Colloquially, we say they can't have their cake and eat it.

4.1 Separate applications have been made for the two sites

4.1.1 The Appellants chose to make separate applications for the Main Site and the Triangle developments. A single application covering the whole of the development could have been made, but, despite the developer being identical and indeed both areas being included in the branding 'King's Cross Central', that was not done. There would, of course, have had to be parallel applications to both boroughs, as has happened with the Triangle, but there would have been some obvious advantages to this, and the Appellants are now trying to claim one with regard to amalgamating the amount of affordable housing across both sites. But they chose to separate the

applications and that decision has had some consequences which I look at here.

4.1.2 In the process of this application being considered by both Councils, it became even clearer that the Triangle and the Main Site were being regarded as two separate developments. Evidence of this can be found by examining how the Appellants and the two Councils handled the applications.

4.2 How the boroughs handled the applications

4.2.1 Camden considered both the Main Site and the Triangle in March 2006. Its resolutions included a grant of planning permission for the Triangle, subject to a number of contingencies. The relevant one for present purposes was 'a resolution by London Borough of Islington to grant planning permission in the same terms' [*LBC GP(DC)SC Minutes, 09-03-06* [extract]].

4.2.2 Islington considered the Triangle on 18 April 2006. The Islington resolution included substantial changes to the proposed conditions as West Area Planning Sub-committee recognised [*LBI west planning minutes, 18 April 2006, minute 249*]:

The sub-committee noted that their decision, in particular the change to the number of residential units made to Condition 26, represented a material change to what had been agreed by LB Camden on the identical outline application and that it may therefore need to be reconsidered by that authority and this application may need to be referred back to this authority in due course.

4.2.3 Two days later the Camden sub-committee met and were informed that Islington had made a decision on the Triangle. The Sub-committee requested that a 'report be submitted to the next meeting of the Sub-Committee on how Islington's decision impacted on Camden's decision' (Minutes, Camden General Purposes (Development Control) Sub-Committee, 20 April 2006 [quoted in *CRG Decision Chronology, p.2*]).

4.2.4 Despite re-iterating this request at their next four meetings (minutes of Camden Development Control Committee, 1 June 2006, 22 June 2006, 13 July 2006, and 3 August 2006 [quoted in *CRG Decision Chronology, p.3*]), Councillors received nothing except an informal briefing note on 19 June 2006 which stated that 'Islington have since formally referred this decision back to Camden' [*LBC DCC briefing note 19-06-06*].

4.2.5 Despite the fact that Islington had 'formally referred this decision back to Camden' the matter was not brought back to the

Camden committee for decision. Instead, on 3 August 2006 the Camden Committee felt forced to record formally 'the strength of Members' concern about the delay in the submission of the report requested' [quoted in *CRG Decision Chronology*, p.4].

4.2.6 Finally, on 24 August 2006 a report did come forward, including 'The Triangle Site, York Way: Briefing Note to Development Control Committee Members' and a 'Briefing Note for DCC Members, August 2006' [*CRG Decision Chronology*, p.4]. The briefing did not, in fact, give the Camden members the details of the changes that Islington had made. Instead, it stated that:

It is not possible to give a firm date for this report as it is dependent on further submissions by Argent. For example, if Argent decide to materially change their application a further round of public consultation would normally happen before it is reported to members. If the Main Site s106 report is considered and agreed by DCC in October as per current target (see below) it is likely that Argent will then do the Triangle work. A full report is therefore unlikely to be prepared before December 2006.

4.2.7 An additional point was made to Camden members by one of their officers during that same meeting. The minutes record 'On the question of a proposed timetable for the submission of the application for the Triangle Site, Mr Kirby stated that there was a separate application for the Main Site, which was distinct and as such would not affect a timetable for the Triangle Site' [quoted in *CRG Decision Chronology*, p.5]. As Mr Kirby made clear, Camden officers did not seem to regard the two schemes as one linked project.

4.2.8 So, although Islington had formally referred the application back to Camden, Camden did not consider that referral. Indeed, Camden Councillors were only acquainted with the detailed content of Islington's decision through a written submission made to them, also on 24 August 2006, by the Cally Rail Group [*CRG submission LBC DCC 24-08-06*].

4.2.9 Meanwhile, the Islington Committee was waiting for the Camden Committee to respond to its decision; it obtained updates on 5 June and 11 July 2006 [*CRG Decision Chronology*, p.3]. As late as 12 October 2006 [*LBI OR west planning 12-10-06*] it was told that 'Triangle Site: The outline application as approved by the LBI West Area Committee and the heads of terms specific to Islington have not been progressed. It appears that the applicant is currently focusing on the main site application, S 106 and subsequent reserve [sic] matters applications'.

4.2.10 Finally, in December 2006, Mr Evans of Argent (Kings Cross) Ltd wrote to Islington, not Camden [*LBI Argent letter 07-12-07*]. Argent sought changes to the conditions agreed by the Islington sub-committee in April 2006. An officer report, for information rather than consideration, was tabled for the Islington West Area Planning Sub-committee on 12 February 2007. It said that officers intended to accept all the changes Argent had requested. CRG responded with a submission explaining its concerns [*CRG submission LBI west area 12-02-07*]: while some of the proposed changes were unexceptionable, those relating to the noise and vibration conditions caused great concern. CRG were especially concerned that Argent challenged 'the justification and appropriateness and drafting' of several of these when they were changes made by the previous committee following officer recommendations.

4.2.11 On the night of the February 2007 meeting, the officer position changed. A detailed comparison of the April 2006 conditions and a revised set of proposed changes were laid around [*LBI OR schedule 12-02-7*] and West Area Planning Sub-committee reconfirmed the April 2006 conditions, with some minor drafting amendments. The committee was also concerned about the revised affordable housing offer and asked for independent advice on the matter [*LBI west planning minutes 12-02-07*].

4.2.12 When it came to reconsider the matter on 10 July 2007, WAPS rejected the application [*LBI west planning minutes 10-07-07*], which has led to the current appeal.

4.2.13 In October 2007 the Camden Committee considered the application in the light of the appeal. KXRLG argued unsuccessfully that they should insist on 50% affordable housing and a 70/30 social rented/intermediate mix while CRG raised the issues about whether the intermediate 'products' complied with PPS 3 and noise conditions. [*KXRLG deputation LBC DCC 18-10-07* and *CRG deputation LBC DCC 18-10-07*]

4.2.14 To sum up this point: the Appellant made a clear choice to make separate applications for the Main Site and the Triangle. These applications have been treated as separate by both them and the London Borough of Camden.

4.3 Some unfortunate consequences of separate applications

4.3.1 As a result of the separate applications, it is not open to either council to seek changes such as moving the housing from the Triangle onto the Main Site. As things currently stand, if the

Triangle proves to be unsuitable for housing, the housing could be lost.

4.3.2 A single application would also have allowed the Triangle to be dealt with as part of the phasing of the two developments, rather than being constrained by the present artificial and damaging proposal to prevent early development and the proposed extremely extended life for the permission.

4.3.3 When CRG appeared before the Camden Sub-committee in March 2006 and the Islington Sub-committee in April 2006 it asked them to determine whether the site was suitable for housing at an early stage so that, if it was not, the housing could be moved onto the Main Site and alternative, less noise-sensitive, uses could replace it. We were told this could not happen because the two applications were independent. The effect of this is that, if the site proves to be unsuitable for housing, any housing proposed for the Triangle could be lost [*CRG deputation LBC DCC 08-03-06, and Annex 08-03-06; CRG submission LBI west area 18-04-06, item C1*].

4.4 Amount of affordable housing on the Main Site

4.4.1 Given that the Main Site and the Triangle were subject to these separate applications, the amount of affordable housing proposed for the Triangle must be considered on its merits, in the light of current policy. The Appellants cannot conflate the two sites simply because in this instance it happens to suit them. We urge the Inspector to reject that conflation.

4.4.2 However, if the Inspector does wish to take into account the amount of affordable housing on the Main Site when considering the amount on the adjacent appeal site, then it should be open to objectors to question whether that amount on the Main Site is in fact 'appropriate', despite being beyond the power of the Inspector to affect it.

4.4.3 I deal below with the issue of affordable housing provision on the Triangle Site itself. If the Inquiry does wish to take the amount of affordable housing on the Main Site into account, then we believe it is relevant to look again at the amount in the Main Site consent insofar as the Appellant asserts it affects that on the Triangle site—implicitly that a generous provision on the Main Site can in some way compensate for an inadequate provision on the Triangle.

4.4.4 We do not intend to argue here whether all the 'affordable' housing on the Main Site qualifies as such, and confine such arguments to discussion specific to the Triangle application. We

accept, for these purposes only, that the Main Site affordable housing provision constitutes 44% of the housing planned for that site (that is, 42% net new provision and 2% units which are 'replacement' for those demolished).

4.4.5 However, this 44% total (gross) provision falls some way short of the 50% target in LBC's *Replacement Unitary Development Plan* [H.2 and KC4] and the *London Plan* targets [3.37]. Given the Appellants' claim that the 44% on the Main Site, with the 34% proposed for the Triangle, is appropriate affordable provision, we invite the Inspector to consider whether it actually is 'appropriate' in the light of policies demanding 50%, and the well-publicised lack of affordable housing in London as a whole.

4.5 How the 'appropriateness' of provision less than 50% was assessed

4.5.1 CRG objected in November 2005 to the lack of business case accompanying the revised applications for the Main Site and the Triangle [Part 1.1, *CRG Objection to LBC & LBI*, 21-11-05], as they had in objections to the previous applications in October 2004. No business case has ever been made public.

4.5.2 However, after the Main Site provisional consent was ratified by the Mayor in March 2006, we discovered there was a report from DTZ and obtained a copy [*GLA DTZ KX Briefing note*]. It is dated 8 March (the first of the two days on which LBC's Development Control Committee discussed the applications). We cannot discover that this report was shown to members of the Committee taking the March 2006 decision, and it certainly did not appear in the agenda papers for their meeting.

4.5.3 I have had regard to two publications:

1. Briefing Note from DTZ regarding the King's Cross Central site (but excluding the Triangle site) dated 8th March 2006
2. Letter from DTZ dated 29th November 2007 updating the 2006 note to take account of the Triangle site.

4.5.4 In support of my view, that the financial advice provided by DTZ is insufficient to conclude that 44% is the maximum viable proportion of affordable housing that the development can bear, I draw attention to statements by LB Camden that they do not rely on DTZ's financial model in concluding on the appropriate level of affordable housing. This is set out:

1. At S.6.6 of LB Camden's statement of case by Richard Kirby, and

2. In the letter from the Legal Services of LB Camden to LB Islington's Chief Planning Lawyer, dated 18th December 2007.

4.5.5 The Mayor outlines the DTZ assessment [*GLA Kings Cross Central (stage 2 report)*, §§s 83-90]. While the Mayor's report notes some of the shortcomings of the DTZ briefing note, § 91 still concludes:

The financial appraisal, although heavily caveated, demonstrates that the scheme is financially viable and should be able to deliver the strategic and local policy requirements for this mixed use regeneration proposal. It is therefore possible to conclude from the financial appraisal that 50% affordable housing is not financially viable within this development, within the context of the available resources and values. A deviation from the London Plan affordable housing target is therefore justifiable in this instance, taking into account the results of the financial appraisal and the scheme's other benefits. In sum, the revisions to the application demonstrate that the maximum reasonable amount of affordable housing has been sought, in accordance with London Plan policy 3A.8.

4.5.6 I believe that the DTZ briefing note fails to provide sufficient financial justification for reaching the conclusion that 50% affordable housing is not financially viable. We attach the Cally Rail Group's analysis of the shortcomings of the DTZ briefing note [*CRG analysis DTZ Briefing Note*] and below list some of the points relevant to the issue of affordable housing quantum.

1. Insufficient data was given DTZ for them to make an informed assessment of all costs and revenues.
2. The outline consent provides for 'up to' certain amounts of floorspace but DTZ evaluated just one of the many possible combinations of building types.
3. The Briefing Note reveals severe limitations in LBC's advisers' methodology and those reading the note are expected to take on trust both DTZ's numerical assumptions on a vast range of variables and also the robustness of the methodology used in the modelling (neither is described).
4. Without hard information, DTZ was only able to make 'judgements' about the possible costs of the land and timing of payments.
5. DTZ assumed such land costs to be fixed, despite being ignorant of two important things: the exact nature of the agreement between the developer and the landowner, and what combination of uses would be developed where and therefore the land's possible value post completion.

6. Certain costs (s.106 and heritage) are described as a cost to development profit, but are more likely to be shared between developer and landowner. It would normally be expected also that the costs of making affordable housing provisions (at the levels required under planning policies) would be discounted out of a land acquisition cost.
7. DTZ asserts without sufficient evidence that the overall profitability of the scheme would be threatened by more than 44% affordable housing.
8. DTZ assumes the developer will carry all the building costs of affordable housing, without taking into account normal Housing Corporation grant or SRL funding for at least some of these building costs. This is a major distortion of the analysis.

4.5.7 The case justifying only 44% affordable housing on the Main Site was not made on a proper and safe basis. That flawed analysis (regardless of it having been accepted by the Mayor as a justification to breach his own policy) cannot be used to justify a mere 34% affordable housing on the Triangle site. There is no evidence that any more rigorous financial feasibility appraisal, of the kind often required by the GLA and local authorities (e.g. the Three Dragons Model) was ever undertaken or sought. (See *London Plan* § 3.41)

4.5.8 In summary, on the basis of my analysis of the DTZ advice and in line with the treatment of that advice by LB Camden, I conclude that the GLA is not correct to state in its Stage II report dated 23rd March 2006 at s.91, that: 'It is therefore possible to conclude from the financial appraisal that 50% affordable housing is not financially viable within this development, within the context of the available resources and values'.

4.5.9 Neither does the DTZ report support the statement in the letter from the GLA Policy and Partnerships Directorate to LB Camden, dated 13th December 2007, that 'the King's Cross Central scheme achieved the maximum reasonable amount of affordable housing'.

5. 'Affordable' housing provision on the Triangle if residential amenity is established

5.0.1 If it does become possible to establish that sufficient residential amenity can be provided to ensure this site is appropriate for both market and affordable homes, then 50% of any housing on the site should be affordable, as defined by PPS3.

5.1 Overall amount of affordable housing

5.1.1 The Appellant asserts in his grounds of appeal that:

The affordable housing proposed on the appeal site is not deficient but is entirely appropriate for the development proposal.

5.1.2 I deal below with the question of what types of intermediate housing 'products' may qualify as affordable housing under PPS3. Here I simply point out that 50% affordable housing on a site of this size is a policy requirement of LBC, LBI and the Mayor's target. This means the amount of affordable housing—a mere 34%—proposed by the Appellants is seriously deficient. The KXRLG has consistently argued for higher affordable and social rented proportions and absolute numbers of dwellings, notably in its objection to the Applications for the Main and Triangle sites in November 2005. [KXRLG objection to LBC & LBI, 21-11-05]

5.1.3 In the *London Plan 2004* the Mayor 'adopted a strategic target that 50 percent of all additional housing should be affordable' [§3.37]. This policy remains unamended in the *London Plan Further Alterations* [§3.37].

5.1.4 In the *London Plan*, King's Cross is an 'Opportunity Area' and the plan provides for the delivery of a minimum of 2250 additional homes (of all tenures) in the period 2001-2026 (*London Plan FA table 5B*). The main site permission provides for a maximum net additional construction of 1626 units on the Main Site (*LBC OR 17-02-06 §7.2*). Taken with the 246 units in the Triangle proposal, the total would be 1890—well short of the 2250 foreseen in the *London Plan*.

5.1.5 The Panel appointed by the Secretary of State to examine the draft housing alterations to the *London Plan* reported in September 2006 and specifically refers to the Kings Cross Railway Lands Group's concern that housing needs are being overlooked because of commercial regeneration and the way outline planning permission had been granted (by Camden on the main site). The Panel recommended that the Mayor's Statutory Housing Strategy give special consideration and offer appropriate guidance so that the issues raised in respect of the King's Cross area do not recur (*London Plan Early Alterations EIP Panel report § 2.41 and Recommendation H18*). [LP EIP extract.pdf]

5.1.6 The London Borough of Islington has more recently adopted a similar policy:

In schemes of 10 or more housing units, 50% of provision should be affordable. [LBI: Core Strategy, CS18].

5.1.7 Islington is the sixth most deprived borough in the country, and the neighbourhood adjacent to this site is one of the most deprived in the borough. Camden also contains severely deprived wards, the worst of which are clustered in the centre and south of the borough. There is an urgent need, both locally and London-wide, for housing which ordinary people can afford and this site does not provide any reason to make an exception.

5.1.8 Islington's core planning strategy (Submission draft March 2007, p.10) summarises the evidence available to that council:

There is significant housing need in the borough. The housing needs survey showed that over 11,000 households are in housing need and there are currently 6500 households on the council's housing waiting list. There are also problems of overcrowding and homelessness. The lack of affordable housing may well be the biggest single problem in Islington, and the 'gap' between housing incomes and property values is one of the greatest in the country. The average house price in Islington is now over £330,000.

5.1.9 Camden's waiting list is also huge: 10,442 households at April 2007 of whom 7825 are described as having 'reasonable preference category' [*LBC Housing Strategy Statistical Appendix, Table C*]

5.1.10 We urge the Inspector to uphold local and regional policies on this issue and require that 50% of any housing on the Triangle should be affordable.

5.2 The affordable housing mix

5.2.1 The Appellant's affordable housing offer has changed several times. As I understand it, the Inquiry will consider what Camden officers have dubbed the 'Appeal proposal' in their report to LBC's Development Control Committee, 18 October 2007.

5.2.2 The details of the 'Appeal proposal' were shown in a table on p.15 of the report, with another in Appendix 2. Unfortunately, neither table added up. Replacement versions of both tables were circulated to Committee members before the meeting and made available to the public at the meeting as part of the Supplementary Agenda. A further version of Appendix 2 had to be laid around to Committee members and some members of the public as the Supplementary Agenda was wrong. [These paper documents are collated as a scanned pdf *LBC DCC supplementary papers 18-10-07*].

5.2.3 For present purposes I assume that the final version of the table accurately reflects the 'Appeal proposal'.

5.2.4 There are three problems with this offer:

1. The inadequacy of the 'affordable' total
2. The relative proportions of social rented and intermediate affordable housing; and
3. Whether some of the so-called intermediate products are actually low cost market housing and so fail to qualify under Planning Policy Statement 3 'Housing' (PPS3) as intermediate affordable housing.

5.2.5. The balance between social rented and intermediate housing
The *London Plan* (3.38) seeks a split between social-rented and intermediate affordable housing of 70% to 30%. Camden's *UDP* policies H2 and KC4 (which are more recent than the *London Plan*) require the same split. Islington's planning policies appear to be in flux on this point so the *London Plan* provides the appropriate policy base on the question. It is clear that, within the affordable housing being offered, 70% should be social-rented and 30% intermediate affordable housing.

5.2.6 Applying this to the 84 'affordable' units currently offered, 58 or 59 should be social-rented rather than the 36 offered. Taking it further, if 50% of the units in the scheme were affordable, as the *London Plan*, Camden's *Revised UDP* and Islington's policies all require, then there would be 123 affordable units: 86 social-rented units (more than the Appellant's total affordable offer) and a further 37 intermediate affordable units. The current balance is wrong and does not respond to the needs of either borough.

5.2.7 I cannot stress too strongly the importance of genuine affordability if housing provision here is to contribute realistically to the needs of our members in the locality.

5.2.8 My own research has included a careful random sample survey of 327 households (about 1000 individuals) in the King's Cross area in 2000. Among the findings were a very wide spread of incomes (after taxes and benefits) with an average of £21,000 per household. Of families with children (where needs and overcrowding were most acute) 54% were found to have household incomes below the Inner London average. Many employed people are earning only at the minimum wage levels and thus are able only to afford Council rented housing, and that often only with Housing Benefit. (Emmanuel Mutale and Michael Edwards, *Monitoring and evaluation of the work of the King's Cross Partnership*, Final Report, UCL, 2003, p15 www.bartlett.ucl.ac.uk/research/planning/kx)
[*UCL KCP final report extract.pdf*]

5.2.9 The London Tenants' Federation, in evidence to the 2007 EIP on the London Plan Further Alterations stressed the continuing scale of the need for social housing to rent and argued that 'intermediate housing is not meeting the needs of those it was designed to help' and goes on to say that this has been especially a problem in Islington where intermediate housing has formed quite a high proportion of output but been too expensive for the people in need. (*LTF Written Statement on Matter 6, FALP, 2007, page 11*). [*LTF Statements FALP extracts.pdf*]

5.2.10 The experience of local people was most powerfully expressed in late 2007 by Candy Udwin, a community leader in Somers Town, speaking on TV news when she said '...and we don't want "affordable" housing. It's just not affordable by people round here.'

5.2.11 It might be argued that a shortfall against plans and targets in King's Cross could be justified by better-than-target social rented or other affordable housing provision elsewhere. However, achievement of these targets has been woefully inadequate at the London level. In its evidence to the EIP on the London Plan Further Alterations, the London Civic Forum, after widespread consultation with tenants' groups and others, said:

The London Housing Strategy evidence base 2005 found that to meet need, 59% of housing constructed in London should be social rented, 7% intermediate and 34% market. However, the percentage of social housing being achieved within new developments is far too low. The latest monitoring report of the London Plan of February '07 shows that only 19% of homes constructed in 05/06 were social rented (a shortfall of 40%), 12% intermediate and 69% market housing (35% more than required). (LCF Written Statement on Matter 6, FALP, 2007, page 2). [LCF statement FALP extract.pdf]

5.2.12 The Mayor of London, in his *Draft Housing Strategy* (2007 page 31) reviews the latest available data and concludes:

The evidence shows that 82 per cent of Londoners in housing need can only afford social rented housing, while intermediate housing may be appropriate for the other 18 per cent. In this context the Mayor believes that the ratio of 70:30 of output is the right long term balance and will seek to achieve this through his Strategic Housing Investment Plan.

5.3 Types of intermediate affordable housing and PPS3

5.3.1 The 'Appeal proposal' differs from earlier offers in the mix of products within its intermediate affordable housing offer. The shift towards recognised products (key worker sub-market rented, and

shared ownership) is welcome, so far as it goes. The developer-provided 'Homebuy' has been withdrawn but could creep back in through the back door as any 'Right-to-Buy Homebuy' properties not taken up can be converted to 'Homebuy' by the developer.

5.3.2 We do not consider that the 'Homebuy' or the two other developer-provided products—'Shared Equity' and 'Right-to-Buy Homebuy'—fully comply with PPS3. The central issue is that the staircasing receipts will cease to be recycled after a mere 15 years—at which point the money reverts to the developer as capital receipts. In effect they are short-term loans to the initial occupiers of the homes, not a continuing subsidy. As a result, all three products should be considered as low-cost market housing rather than affordable housing. On this basis, the number of intermediate affordable units on offer falls to 24 units. That would reduce the total affordable housing to 60 units out of 246: a mere 24.4%.

5.3.3 It is helpful to recall the policy history. PPG3 (the predecessor of PPS3) was ambiguous about what was and what was not to be considered as intermediate affordable housing. PPS3, published in December 2006 together with supporting guidance called *Delivering Affordable Housing*, removed that uncertainty.

5.3.4 It defines both affordable housing and intermediate affordable housing.

Affordable housing is:

'Affordable housing includes social rented and intermediate housing, provided to specified eligible households whose needs are not met by the market. Affordable housing should:

—Meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices.

—Include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision'.

Intermediate affordable housing is:

'Housing at prices and rents above those of social rent, but below market price or rents, and which meet the criteria set out above. These can include shared equity products (e.g. HomeBuy), other low cost homes for sale and intermediate rent.'

5.3.5 *Delivering Affordable Housing* explains that 'The Government has adopted this definition of affordable housing because it wishes to ensure that developer contributions are used to help provide

genuinely affordable housing for households in need **over the long term'** (§34, emphasis added).

5.3.6 After outlining the types of housing between market and social rented housing that can be Intermediate Affordable Housing (§38), it continues by requiring both subsidy and the recycling of that subsidy to meet the requirement for long term provision:

39. Homes of any of these types should only be considered intermediate **affordable** housing if they meet the criteria in the definition. If they do not, even if offered at less than market price, they should be considered 'low cost market housing', outside the definition of affordable housing.

[Emphasis in the original]

40. For example, a shared ownership home is likely to be affordable if access is restricted to households from a target group at a price they can afford. 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. [Emphasis added]

41. **Low cost market housing is not** part of the Government's definition of **affordable housing** although it can play an important role in meeting housing demand. Local authorities should consider the potential to provide low cost market housing as part of their approach to achieving a mix of housing (PPS3, paragraph 26). [Emphasis added]

5.3.7 The Mayor has come into line with this ruling and low cost market housing was deleted from *London Plan* definition of affordability as part of the 2007 Further Alterations.

5.3.8 *Delivering Affordable Housing* also recognises (§§97 to 101) that the subsidy could be provided by the developer without housing grant. It reaffirms that 'The definition of affordable housing set out above applies to both grant funded and grant free homes'. After noting that the Housing Corporation will ensure that the homes meet the definition of affordable housing where they are funded with housing grant, it continues 'Where no grant is provided, it will be for the local authority to ensure that these matters are dealt with fully'.

5.3.9 The fundamental policy underlying PPS3 and *Delivering Affordable Housing* is simple and clear: ownership-based intermediate affordable housing must not disappear as the beneficiaries staircase out of the intermediate sector. The subsidy that helped provide their housing must be recycled' to provide more affordable homes or buy back the home if needed' (*Delivering Affordable Housing*, §40). The definition of affordable housing in

Appendix B of PPS3 is unambiguous on this point: 'Affordable housing should... include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision'.

5.3.10 This applies with equal force whether the provision mechanism is developer-led or underwritten by the Housing Corporation: the subsidy must be recycled to 'provide genuinely affordable housing for households in need over the long term' (*Delivering Affordable Housing*, §34). If the proposed housing does not meet this test, it is not part of the Government's definition of affordable housing and should properly be called 'low cost market housing'. That is the test that the intermediate affordable housing products offered here must meet. 'Shared Equity', 'Right-to-Buy Homebuy' and 'Homebuy' all fail that test.

5.4 Staircasing

5.4.1 All three products that cause concern involve the first occupier buying only a percentage of the equity initially. For the portion they buy they will pay the full market price. The remaining value on the first sales will be an interest-free loan to the occupier. At a later stage the occupier may buy more of the equity. Again, the portion they buy will be at the full market price. The equity purchase money paid over to the developer goes into a designated account. This designated account is used to support the interest-free loans to later purchasers under these schemes. In effect it offsets the developer's liability to provide these loans. The designated fund is time-limited. Any funds in it can be withdrawn by the developer fifteen years after the tranche of housing to which they relate was first occupied. When withdrawn they become receipts of the development and their role as subsidy ceases. This is not provision 'for the subsidy to be recycled for alternative affordable housing provision' as required by PPS3. It is a temporary loan to first occupiers.

5.5 Right to buy subsidy

5.5.1 The developer's 'Right-to-Buy Homebuy' product needs further explanation. The proposal seeks to mimic the government scheme. The developer, in effect, reduces the purchase price by up to £16,000 for a qualifying purchaser. That is plainly a subsidy. Unfortunately, it does not help to meet the PPS3 recycling requirement as it only benefits the original purchaser. However, if no purchaser can be found who would qualify for 'Right-to-buy' the developer will be allowed to market it as their 'Homebuy' product and pay the £16,000 into the designated fund along with the

staircasing receipts. As such it becomes part of the financing of subsidies to purchasers of the other products.

5.6 Legal consideration of PPS3

5.6.1 Subsidy recycling was not considered by the judge who heard the judicial review of LBC's grant of planning permission for the Main Site. We understand that Camden accepts this point. This was also explained in CRG's note to Islington which is attached to their Committee report considered in July 2007 [*CRG submission LBI west area 10-07-07*].

5.6.2 Islington sought its own legal advice before the judicial review hearing. Counsel emphasised the importance of subsidy recycling. It appears she was not told of the staircasing fund and no further written opinion was sought from her on the question. Equally, it is unfortunate that the CRG note on the issue was not put to her, so Islington members were left to form their own view of the position.

5.7 Summary on 'affordable housing' provision

5.7.1 The scheme does not offer 50% affordable housing. At best it offers 34.1%.

5.7.2 The split between social rented housing and intermediate affordable housing is wrong. The scheme should offer 70% social rented housing but only offers 43%.

5.7.3 The developer's own 'intermediate' products do not comply with the tests in PPS3. They are low-cost market housing. Unless they are replaced by products that do qualify as intermediate affordable housing (such as key-worker sub-market rented or shared ownership) or the subsidy is fully recycled they cannot be included as part of the affordable housing offer. Excluding them from the calculations means that the Appellants are only offering 24.4% affordable housing.